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ABSTRACT

This study assessed the federal civil rights enforcement budget since fiscal year (FY) 1994, analyzing the effects of recent civil rights legislation and executive orders on workload levels and staff demands. It describes and analyzes the budget requests of the Clinton administration from FY 1994 to FY 2001 and the funding levels appropriated by Congress in response to Clinton's requests. Results demonstrate that since the Commission's 1995 report, the nation's enforcement of civil rights laws continues to be threatened by unequal and uneven funding and staffing for federal civil rights agencies. Inadequate funding and staff levels persist in each of the agencies, even though enforcement responsibilities of the agencies have grown substantially. The six chapters present data on: (1) "Office for Civil Rights, U.S. Department of Education"; (2) "U.S. Equal Employment Opportunity Commission"; (3) "Office of Federal Contract Compliance Programs, U.S. Department of Labor"; (4) "Civil Rights Division, U.S. Department of Justice"; (5) "Office for Civil Rights, U.S. Department of Health and Human Services" and (6) "Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development." (SM)

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Funding Federal Civil Rights Enforcement: 2000 and Beyond

A Report of the United States Commission on Civil Rights

February 2001

UD034414

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
- Submit reports, findings, and recommendations to the President and Congress.
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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Funding Federal Civil Rights Enforcement: 2000 and Beyond

Letter of Transmittal

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

Adequate funding is essential to civil rights enforcement. Enforcement of civil rights laws of the United States by the federal government is crucial to the effort to ensure equality in access to jobs, housing, education, and services, as well as in the administration of justice. While constant evaluation of policy and efficient deployment of available resources are necessary, these responsibilities cannot be done without appropriate funding.

This study follows the 1995 report, *Funding Federal Civil Rights Enforcement*, which demonstrated that resources provided for civil rights enforcement lag behind the workloads of the civil rights enforcement agencies. That report also showed that the workload of the civil rights enforcement agencies had increased between 1981 and 1996.

However, not much has changed. Although some agencies, including the Equal Employment Opportunity Commission and the Civil Rights Division of the Department of Justice, have received recent budget increases, many agencies experienced decreases in funding prior to fiscal year 1998 or have received small increases as their workloads have expanded. Among the most disturbing findings:

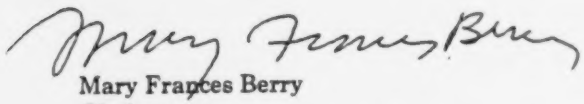
- While annual complaints received by the Department of Education, Office for Civil Rights, have more than doubled over the past decade, staffing levels have fallen. The fiscal year (FY) 2001 budget request estimates a staff level 12 percent below the FY 1994 level.
- The Office of Federal Contract Compliance Programs of the Department of Labor experienced a 7.4 percent decrease in staff levels between FY 1994 and FY 1999, and, accordingly, resolved 61 percent fewer cases in FY 1999 than it had in FY 1994.
- In real spending power (i.e., accounting for inflation), budget requests for the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, have decreased by 11.4 percent between FY 1994 and FY 2000, while appropriations have dropped by 14.4 percent.

Budget requests and appropriations for the Department of Health and Human Services, Office for Civil Rights, have decreased overall since FY 1994, in both actual and real terms.

While agencies have made adjustments to account for reductions in resources—or insufficient resources—many key civil rights enforcement tools have been abandoned. Limited funding results in fewer compliance reviews conducted, abbreviated investigations, less policy development, and less defense of civil rights laws in court. These factors in combination with others have hindered the provision of services to victims of unlawful discrimination.

We urge you to ensure that the federal civil rights agencies can fulfill their mandates of effective enforcement of federal civil rights laws. This can be done only with the adequate provision of resources.

Respectfully,
For the Commissioners,



Mary Frances Berry
Chairperson

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Executive Summary

With this report, the U.S. Commission on Civil Rights demonstrates that inadequate funding levels for federal civil rights enforcement have occurred simultaneously with growing workloads at the agencies responsible for enforcing civil rights laws. As a result, the nation's civil rights laws, which protect against invidious discrimination and aim to ensure equal opportunity to all, are undermined and the enforcement of these laws continues to be threatened.

Beginning where the Commission's 1995 report on funding for civil rights enforcement ended,[1] this study analyzes the budgets of six principal civil rights agencies since fiscal year (FY) 1994. This report concludes that inadequate funding and staff levels persist in each of these agencies, thus restraining them from sufficiently fulfilling their duties. More specifically, the report findings include:

- ***The U.S. Department of Education (DOEd):*** While annual complaints received by the DOEd Office for Civil Rights (OCR) have more than doubled over the past decade, staffing levels have fallen. The FY 1999 full-time-equivalent (FTE) position staffing level was 10 percent below the FY 1994 level. The FY 2001 budget request estimates that the staff level for DOEd/OCR will drop to 12 percent below the FY 1994 level. Overall, in actual dollars, DOEd/OCR's budget has increased by 26 percent. However, in terms of real spending power, the increase is only 12 percent. Further, these increases have not been sufficient to offset the increasing workload coupled with decreasing FTE levels.

- ***The U.S. Equal Employment Opportunity Commission (EEOC):*** EEOC received over 10,000 more annual complaints this decade than it had during the 1980s. However, the requested FTE level for EEOC in FY 2001 is 10 percent below the actual FTE level in FY 1981. In FY 1999, EEOC had 239 fewer FTEs than in FY 1994. Concurrent with these changes in workload and staffing, EEOC has experienced fluctuations in budget appropriations. Although its budget has increased 22 percent in actual dollars since FY 1994, the increase has not been sufficient to address EEOC's burgeoning workload, including its complaints backlog. Further, the EEOC budget has not consistently experienced increases: overall, the budget declined in terms of real dollars between FY 1994 and FY 1998.

- ***The U.S. Department of Labor:*** The Office of Federal Contract Compliance Programs (OFCCP) experienced a 7.4 percent decrease in staff levels between FY 1994 and FY 1999. OFCCP resolved 61 percent fewer cases in FY 1999 than it had in FY 1994. Meanwhile, compliance reviews are expected to rise by 1.5 percent in FY 2000. Although, overall, the OFCCP budget has increased 16 percent in real terms since FY 1994, the agency experienced slight declines in real spending power between FY 1994 and FY 1997.

- ***The U.S. Department of Justice:*** In real terms the FY 2000 budget request for the Civil Rights Division (CRD) was 24 percent higher than the FY 1994 request. However, over that same period, CRD experienced enormous growth in its workload and responsibilities. Yet, the slight increases in resources that CRD received during this time were not commensurate with its expanding workload. Further, although CRD's budget has increased by 22 percent in real terms

[1] U.S. Commission on Civil Rights (USCCR), *Funding Federal Civil Rights Enforcement*, June 1995.

overall since FY 1994, between FY 1995 and FY 1998, Congressional appropriations for CRD declined in real spending power.

- ***The U.S. Department of Health and Human Services (HHS):*** For FY 2001, the HHS Office for Civil Rights (OCR) predicts a rising complaint workload that will be parallel to the annual number of complaints received by the agency in FY 1994. However, while the FY 2001 request projects an FTE increase of 27 above the FY 1999 level, this number is still 47 FTEs below the FY 1994 level. In both actual and real terms, requests and appropriations for HHS/OCR have decreased overall since FY 1994.

- ***The U.S. Department of Housing and Urban Development (HUD):*** The Office of Fair Housing and Equal Opportunity (FHEO) projects that the Title VIII complaint workload, continually rising, will be 15 percent greater in FY 2001 than it was in FY 1994. Yet, staff levels have decreased by 22 percent between FY 1994 and FY 2000. In real spending power, budget requests for FHEO have decreased by 11.4 percent during that period, while appropriations have fallen by 14.4 percent.

The Commission's 1995 report on funding levels for federal civil rights enforcement warned that "reductions in funding and staff continue to undermine our national enforcement of civil rights."[2] This current study concludes that the President and the Congress have continued to retreat from their obligation to ensure that adequate resources are provided for civil rights enforcement. As a result, federal civil rights agencies and the laws they enforce are increasingly endangered. Unfortunately, in this country, fundamental institutions such as educational establishments, housing, and nursing homes still regularly deny equal access to individuals based on race, color, religion, sex, age, disability, or national origin.[3] Discrimination remains pervasive in the American workplace, and equal opportunity is consistently denied.[4] Throughout this nation's history, laws were created to protect against such invidious discrimination and, in turn, to further equality for all. The federal agencies that enforce these laws are the Untied States' principal means of ensuring that civil rights become a reality and the goals of these mandates are met. By limiting actual enforcement and damaging the deterrent effect of such enforcement, inadequate resources have continually undermined the essential responsibilities of federal civil rights agencies. Until the President and Congress remedy this situation, millions of individuals will be deprived of adequate means to seek justice and equal opportunity.

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[2] Ibid., p. 4.

[3] *See* USCCR, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996; USCCR, *Equal Educational Opportunity Project Series*, vols. I–V; USCCR, *The Health Care Challenge: Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality*, September 1999.

[4] *See* USCCR, *Helping Employers Comply with the ADA: An Assessment of How the United States Equal Employment Opportunity Commission is Enforcing Title I of the Americans with Disabilities Act*, September 1998; USCCR, *Helping State and Local Governments Comply with the ADA: An Assessment of How the United States Department of Justice is Enforcing Title II, Subpart A, of the Americans with Disabilities Act*, September 1998; USCCR, *Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Opportunity Commission's Enforcement Efforts*, September 2000.

Introduction

In 1995, the U.S. Commission on Civil Rights, in a report on funding levels for federal civil rights enforcement, concluded that "reductions in funding and staff continue to undermine our national enforcement of civil rights."[1] In an earlier report, the Commission warned that reductions in funding for civil rights enforcement would "limit actual enforcement, undercut the deterrent effect of such enforcement by diminishing the credibility of potential federal action, reduce the motivation and assistance for those who would voluntarily comply with civil rights obligations and weaken state and local efforts to ensure equal opportunities."[2]

This study begins where the Commission's 1995 report ended, assessing the federal civil rights enforcement budget since fiscal year (FY) 1994.[3] The data presented here demonstrate that since the Commission's 1995 report, the nation's enforcement of civil rights laws continues to be threatened by unequal and uneven funding and staffing for federal civil rights agencies.

Scope and Methodology

The Civil Rights Division of the U.S. Department of Justice has major responsibility for civil rights enforcement. However, other agencies within the federal government are on the front lines in the effort to eradicate discrimination and to ensure equal opportunity for all. The study first outlines the jurisdiction and enforcement authority of six principal agencies of the federal government charged with civil rights enforcement:

- the U.S. Department of Education, Office for Civil Rights;
- the U.S. Equal Employment Opportunity Commission;
- the U.S. Department of Labor, Office of Federal Contract Compliance Programs;
- the U.S. Department of Justice, Civil Rights Division;
- the U.S. Department of Health and Human Services, Office for Civil Rights; and
- the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity.

In order to assess the enforcement responsibilities of the six civil rights agencies, this report analyzes the effect of recent civil rights legislation and executive orders on workload levels and staff demands. It then describes and analyzes the budget requests of the Clinton administration, from FY 1994 to FY 2001, and the funding levels appropriated by Congress in response to the President's requests.

This study does not evaluate the effectiveness of civil rights enforcement, nor does it evaluate qualitative measures such as the efficiency of the work force or the nature of discrimination. It does include an examination of results that helps to demonstrate the actual impact of funding levels. The information in this report, unless otherwise indicated, was drawn from documents provided by the

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[1] U.S. Commission on Civil Rights (USCCR), *Funding Federal Civil Rights Enforcement*, June 1995, p. 4 (hereafter cited as USCCR, 1995 Budget Report).

[2] USCCR, *Civil Rights: A National, Not a Special Interest*, June 1981, p. 122.

[3] The 1995 report was the first comprehensive assessment of federal civil rights enforcement budgets since 1983. *See* USCCR, *Federal Civil Rights Commitments: An Assessment of Enforcement Resources and Performance*, November 1983.

agencies and the Office of Management and Budget (OMB). The funding levels presented are referred to throughout the report as "actual" dollars. In addition, funding levels have been adjusted to account for inflation. These numbers are referred to as either "real" dollars or "real spending power."[4] Following the 1995 report, the deflator used in this report is the composite deflator used by OMB in the historical tables accompanying the annual budget of the U.S. government.[5] Because FY 1994 is used as the date of comparison throughout this report, real funding is expressed in constant 1994 dollars.

Overview of Enforcement Authority

Before the Civil Rights Act of 1957,[6] the federal civil rights effort was limited to the enforcement of a few post-Civil War criminal statutes by the Civil Rights Section of the Criminal Division in the U.S. Department of Justice. Since 1957, Congress and the President have greatly expanded the federal civil rights effort through the creation of additional substantive rights and other enforcement agencies. Today, the major statutes and executive orders affecting civil rights enforcement are:

- the Equal Pay Act of 1963;
- the Civil Rights Act of 1964;
- the Voting Rights Act of 1965;
- President Johnson's Executive Order 11246 of 1965;
- the Age Discrimination in Employment Act of 1967;
- Title VIII of the Civil Rights Act of 1968;
- Title IX of the Education Amendments of 1972;
- the Equal Employment Opportunity Act of 1972;
- the Rehabilitation Act of 1973;
- the Voting Rights Act Amendments of 1975;
- the Age Discrimination Act of 1975;
- President Carter's Reorganization Plan No. 1;
- executive orders relating to equal opportunity in 1978–1979;
- the Voting Rights Amendments of 1982;
- the Civil Rights for Institutionalized Persons Act of 1986;
- the Housing and Community Development Act of 1987;
- the Civil Rights Restoration Act of 1987;
- the Civil Liberties Act of 1988;
- the Fair Housing Amendments Act of 1988;
- the Americans with Disabilities Act of 1990;
- the Civil Rights Act of 1991; and
- the Voting Rights Language Assistance Act of 1992.[7]

Over the years, these laws, which were designed to promote equal opportunity, have significantly affected the workloads of all the agencies studied. In 1978, Reorganization Plan No. 1 restructured the federal equal employment opportunity enforcement program. The plan transferred to EEOC enforcement authority under the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967, and responsibility for duties regarding equal employment enforcement in the federal

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[4] Expression in real dollars accounts for inflation and more accurately reflects the actual purchasing power of the funds received. These adjusted values are referred to throughout the report as real funding or real spending power.

[5] *See* USCCR, 1995 Budget Report, p. 2. The deflator used appears in OMB's historical tables and is based on the Gross Domestic Product (GDP) deflator. Deflators for FY 2000 and FY 2001 are estimates. Executive Office of the President of the United States, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001*, historical tables, table 1.3, data on CD-ROM.

[6] Pub. L. No. 85-315, 71 Stat. 634 (1957).

[7] *See* chap. 1–6 for citations to the civil rights laws discussed in this report.

government. The Reorganization Plan also consolidated federal contract compliance enforcement in the U.S. Department of Labor, transferring the contract compliance activities of 11 agencies to the Office of Federal Contract Compliance Programs.

The Civil Rights Restoration Act of 1987 also significantly increased the workloads of agencies that enforce Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. These statutes prohibit discrimination based on race, color, national origin, gender, disability, and age by any "program or activity" that receives federal financial assistance. In response to a Supreme Court decision that narrowly construed the definition of "program or activity,"[8] Congress passed the Civil Rights Restoration Act of 1987, which restored the definition to include all the operations of a recipient, as long as any part of the recipient's operations receives federal funds. This restoration had a major impact on the number of complaints received and processed by civil rights enforcement agencies.

Most recently, civil rights enforcement responsibilities were significantly expanded with the passage of the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991. The Americans with Disabilities Act prohibits discrimination against qualified individuals with disabilities and provides coverage to some 43 million Americans. Its passage increased the duties of all six agencies studied, but had the most impact on the operations of the U.S. Equal Employment Opportunity Commission and the Civil Rights Division at the U.S. Department of Justice. The workloads of these two agencies were also increased by passage of the Civil Rights Act of 1991, which expanded the coverage of, and remedies available under, Title VII of the Civil Rights Act of 1964.

Overview of Budget Analysis

This study illustrates that funding and staffing for civil rights enforcement have continued to decrease since the Commission's 1995 report. The reductions in these civil rights agencies' budgets occurred at a time when the enforcement responsibilities of these agencies have grown substantially. Inadequate funding and staff levels in the face of increasing workloads continue to threaten the national enforcement of civil rights.

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[8] *See* Grove City College v. Bell, 465 U.S. 555 (1984) (holding that "program or activity" applies only to the particular program or activity to which federal funds are directed).

CHAPTER 1

Office for Civil Rights, U.S. Department of Education

In 1979, Congress enacted the Department of Education Organization Act,[1] which established the U.S. Department of Education (DOEd) in the executive branch of the government, separating the former U.S. Department of Health, Education, and Welfare (HEW) into two agencies: DOEd and the U.S. Department of Health and Human Services. The act also transferred all education-related civil rights functions to DOEd.[2] DOEd's Office for Civil Rights (OCR) enforces antidiscrimination provisions relating to the dispensing of federal financial assistance under a variety of education programs and activities. OCR's primary responsibility is to ensure that recipients of federal financial assistance do not discriminate on the basis of race, color, national origin, sex, disability, or age.

ENFORCEMENT AUTHORITY

OCR's enforcement responsibilities are rooted in five statutes containing antidiscrimination provisions:

- Title VI of the Civil Rights Act of 1964;[3]
- Title IX of the Education Amendments of 1972;[4]
- Section 504 of the Rehabilitation Act of 1973;[5]
- the Age Discrimination Act of 1975;[6] and
- Title II of the Americans with Disabilities Act of 1990.[7]

Under Title II of the Americans with Disabilities Act, DOEd is the designated agency for civil rights enforcement with respect to all programs, services, and activities relative to elementary and secondary education systems and institutions, institutions of higher education and vocational education, and libraries.[8] OCR also implements the civil rights provisions in several DOEd programs, including the Individuals with Disabilities Education Act,[9] the Carl D. Perkins Vocational Education Act,[10] and the Magnet Schools Assistance Program.[11]

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[1] Pub. L. No. 96-88, 93 Stat. 668 (codified at 20 U.S.C. §§ 3401 *et seq.* (1994)).

[2] 20 U.S.C. § 3413 (1994).

[3] Pub. L. No. 88-352, 78 Stat 241, 252 (*reprinted in* 42 U.S.C. §§ 2000d–2000d-7 (1994 & Supp. IV 1998)).

[4] 20 U.S.C. §§ 1681–1688 (1994).

[5] 29 U.S.C. § 794 (1994).

[6] 42 U.S.C. §§ 6101–6107 (1994 & Supp. IV 1998).

[7] 42 U.S.C. §§ 12131–12165 (1994).

[8] 28 C.F.R. § 35.190(b)(2) (2000).

[9] Pub. L. No. 94-142, 89 Stat. 773, *amended by* Pub. L. No. 101-476, 104 Stat. 1141 (1990) (codified at 20 U.S.C. §§ 1400 *et seq.* (1994)).

[10] Pub. L. No. 98-524, 98 Stat. 2435 (codified at 20 U.S.C. §§ 2301 *et seq.* (1994 & Supp. IV 1998)).

[11] Pub. L. No. 103-382, 108 Stat. 3518 (codified at 20 U.S.C. § 7201 (1994)).

OCR's enforcement authority covers all institutions receiving financial assistance from the Department of Education. These recipients include all state education and rehabilitation agencies and their subrecipients; education and rehabilitation agencies of the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States; virtually every school district and postsecondary institution; and thousands of proprietary schools, libraries, museums, and correctional facilities.

Enforcement Procedures

The majority of OCR staff and resources are devoted to complaint investigations and compliance reviews. OCR's enforcement activities also include monitoring corrective action plans, enforcement litigation, policy development and dissemination, complainant appeals, reviewing higher education desegregation plans, and conducting technical assistance activities.[12] If OCR determines that a violation has occurred, an attempt is made to achieve voluntary compliance by the recipient. If OCR cannot obtain voluntary compliance, it proceeds in one of two ways: it initiates an administrative enforcement proceeding seeking to terminate federal financial assistance, or it refers the matter to the U.S. Department of Justice to seek injunctive relief in federal court.[13]

Budget Analysis

In 1998, the Assistant Secretary for Civil Rights, Norma V. Cantú, underscored the importance of funding to OCR when she stated, "There is a direct relationship between the level of funding and [OCR's] ability to serve customers and resolve real civil rights problems."[14] Nonetheless, OCR's budget remained relatively stable between FY 1994 and FY 1997 (see table 1.1) before increasing in FY 1999. Unfortunately, between FY 1994 and FY 2000 the number of full-time-equivalent (FTE) positions in OCR decreased overall.

Table 1.1

DOEd/OCR Funding History
(in actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	$56,570,000	$56,570,000
1995	61,457,000	58,236,000
1996	62,784,000	55,277,000
1997	60,000,000	54,900,000
1998	61,500,000	61,500,000
1999	68,000,000	66,000,000
2000	73,262,000	71,200,000
2001	76,000,000	76,000,000

SOURCE: Appropriations history from Executive Office of the President, Office of Management and Budget, Educational Branch; Executive Office of the President, Office of Management and Budget, fax, Dec. 21, 2000.

[12] *See* USCCR, *Equal Educational Opportunity Project Series*, vol. I, December 1996, chap. 5.

[13] Ibid.

[14] U.S. Congress, House Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies of the Committee on Appropriations, *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1999*, Apr. 1, 1998, p. 648 (testimony of Norma V. Cantú, Assistant Secretary for Civil Rights) (hereafter cited as DOEd/OCR 1999 Appropriation Hearing).

Budgets

FY 1994 to FY 1998. Although President Clinton requested small increases in OCR's budget for FY 1995 and FY 1996 (compared with the FY 1994 request and appropriation), the budget requests for FY 1997 and FY 1998 were lower than the FY 1996 request in both actual and constant dollars (see tables 1.1 and 1.2). However, between FY 1994 and FY 1997 Congressional appropriations for OCR gradually decreased, from $56.6 million to $54.9 million (see table 1.1). The next year, Congress met the President's request of $61.5 million, which increased OCR's budget by 12 percent over its FY 1997 appropriation.

FY 1999 to FY 2001. For FY 1999, the President requested 10.6 percent more funding than what was appropriated for OCR in FY 1998. Although Congress did not grant the President's request, OCR's appropriation of $66 million for FY 1999 was 7.3 percent higher than that in FY 1998 (see table 1.1). In real terms, the appropriation represented a 5.4 percent increase between FY 1998 and FY 1999 (see table 1.2). In FY 2000, OCR received another increase from Congress, raising its budget to $71.2 million. However, in real spending power the FY 2000 increase was only 5.5 percent above the FY 1999 appropriation (see figure 1.1). Similarly, in real terms, the President's request for FY 2001 represents only a 4 percent increase over the previous year's appropriation.

Overall, between FY 1994 and FY 2000, despite the decline in appropriations between FY 1994 and FY 1997, OCR's budget has increased by $14.6 million—a 25.9 percent increase. In real spending power, however, the budget has increased by only 12 percent. In the meantime, FTE staff levels have decreased as the workload has fluctuated throughout this period.

TABLE 1.2

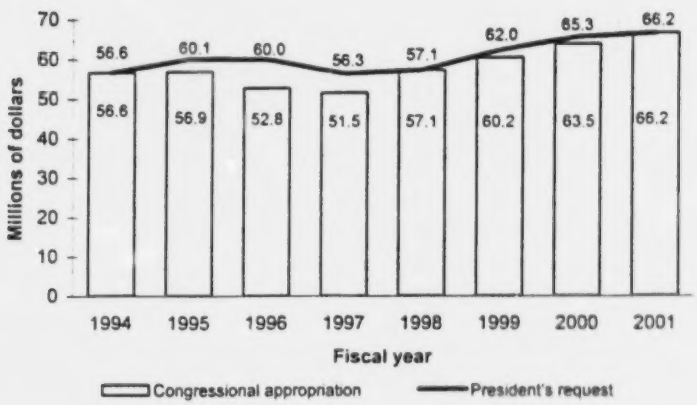
DOEd/OCR Funding History
(in constant 1994 dollars)

Fiscal year	President's request	Congressional appropriation
1994	$56.6	$56.6
1995	60.1	56.9
1996	60.0	52.8
1997	56.3	51.5
1998	57.1	57.1
1999	62.0	60.2
2000	65.3	63.5
2001	66.2	66.2

NOTE: Estimates based on table 1.1.

FIGURE 1.1

DOEd/OCR Funding History
(in constant 1994 dollars)



NOTE: Estimates based on table 1.1.

Staffing and Workload

OCR's work is labor intensive, and approximately 80 percent of its budget is applied toward staffing expenses.[15] As a result of the reductions in the spending power of appropriations from FY 1994 to FY 1997, OCR's FTE level decreased significantly (by 17 percent), from 821 to 681 (see table 1.3). Although staff levels at OCR have since risen, the FY 1999 FTE level of 737 represented a 10 percent reduction from FY 1994 (see figure 1.2).

TABLE 1.3

DOEd/OCR Staffing History

Fiscal year	FTE level
1994	821
1995	788
1996	745
1997	681
1998	685
1999	737
2000	707*

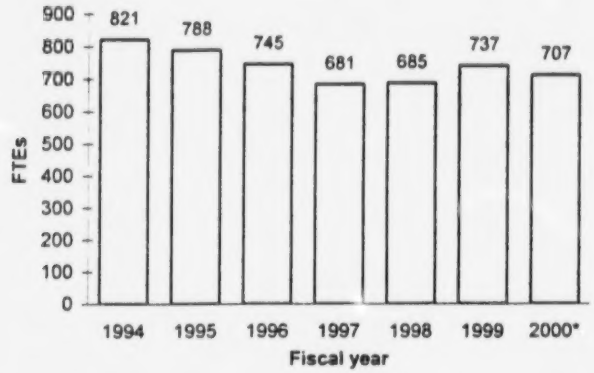
*estimate

SOURCE: OCR/DOEd, Annual Report to Congress, FY 1999, p. 18.

[15] U.S. Department of Education, Office for Civil Rights, fax to USCCR, July 2000 (hereafter cited as DOEd/OCR July 2000 data sheet).

FIGURE 1.2

DOEd/OCR Staffing History



*estimated

SOURCE: OCR/DOEd, Annual Report to Congress, FY 1999, p. 18.

Although staff levels have been decreasing overall since FY 1994, OCR's workload has increased (see table 1.4). The number of complaints received at OCR was relatively stable between FY 1994 and FY 1999; however, these numbers are dramatically higher than they were during the 1980s when OCR averaged approximately 2,500 complaints annually.[16] Over the past six years, OCR has received an average of 5,000 complaints annually, resulting in more than a 100 percent increase in the average number of complaints received compared with the 1980s.[17] As of August 2000, OCR had already received 5,394 complaints.[18]

In response to this staggering workload, OCR was forced to modify its complaint resolution process in FY 1993 to rely more heavily on mediation. OCR created case resolution teams made up of attorneys, investigators, and support staff as a means to resolve complaints more quickly. In order to accomplish this, the agency now works to resolve complaints through mediation before conducting an investigation.[19]

In 1996, the Commission noted that the decline in OCR's budget and staffing, combined with its increased workload, had strained OCR's ability to carry out its mission.[20] Despite the Commission's findings, OCR continued to receive inadequate funding after FY 1996. Thus, in real spending terms, the OCR budget remained below the already low FY 1994 appropriation. Correspondingly, as stated above, FTE levels dramatically dropped between FY 1994 and FY 1997 (see table 1.3 and figure 1.2).

[16] USCCR, 1995 Budget Report, p. 10.

[17] Fifty-seven percent of the total complaints OCR received in FY 1999 were filed under the ADA. U.S. Department of Education, Office for Civil Rights, *Annual Report to Congress*, FY 1999, p. 7.

[18] DOEd/OCR July 2000 data sheet.

[19] U.S. Congress, House Subcommittee on Oversight and Investigations of the Committee on Education and the Workforce, *The Review and Oversight of the Department of Education's Office for Civil Rights—Hearing*, 106th Cong., 1st Sess., June 22, 1999, p. 22.

[20] USCCR, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, pp. 202, 211 (hereafter cited as USCCR, 1996 Title VI Report).

TABLE 1.4

DOEd/OCR Workload History

Year	Complaints received	Complaints closed
1994	5,302	5,751
1995	4,981	5,559
1996	4,828	4,886
1997	5,296	4,981
1998	4,827	4,753
1999	6,628*	5,369
2000	5,394**	–

*1614 of these complaints were filed by an individual complainant.
**As of August 2000.

SOURCE: OCR/DOEd, Annual Report to Congress, FY 1999, p. 18.

Compliance enforcement has suffered due to funding and staffing constraints. In FY 1994, OCR initiated 144 compliance reviews (see table 1.5). The following year, the number of reviews initiated fell by 33 percent. After increasing in FY 1996 and FY 1997, the number of compliance reviews initiated decreased again in FY 1998 and FY 1999 (see table 1.5). In FY 1999, OCR commenced only 76 reviews, a reduction of 47 percent from FY 1994. Further, the number of compliance reviews initiated by OCR in the 1980s was significantly and consistently higher than the number of compliance reviews initiated in the 1990s.[21] In 1996, the U.S. Commission on Civil Rights found that "OCR simply does not have sufficient civil rights staff to execute other enforcement activities than complaint investigations."[22]

Reductions in compliance activity can undermine OCR's effectiveness. For example, in FY 1997, although OCR received 17 percent more Title IX complaints than it had in the previous year, it initiated only two compliance reviews that addressed discrimination based on sex. Yet, between FY 1986 and FY 1997, Title IX complaints increased 335 percent.[23] In its analysis of OCR, the Citizens' Commission on Civil Rights pointed out that proactive measures are necessary in order to have an effect on serious and recurring civil rights violations such as discrimination based on gender. The report asserted that compliance reviews "are necessary to make clear to educational institutions across the board that OCR takes [civil rights violations] seriously."[24]

[21] The number of compliance reviews conducted between FY 1981 and FY 1989 ranged from 136 to 287 per year. USCCR, 1995 Budget Report, p. 10.

[22] USCCR, 1996 Title VI Report, p. 202.

[23] DOEd/OCR 1999 Appropriation Hearing, p. 682.

[24] Citizens' Commission on Civil Rights, *The Test of Our Progress: The Clinton Record on Civil Rights*, 1999, p. 233.

TABLE 1.5

DOEd/OCR Compliance Workload

Fiscal year	Compliance reviews initiated
1994	144
1995	96
1996	146
1997	152
1998	102
1999	76

SOURCE: OCR/DOEd, Annual Report to Congress, FY 1999, p. 18.

Summary

As of August 2000, OCR was staffed with approximately 707 FTEs, a 4 percent reduction from FY 1999. The President's FY 2001 budget request asks for $76 million and an additional 17 FTEs. The FY 2001 request also includes increases in expenses for equipment.[25]

[25] Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001*, appendix, pp. 387–88.

CHAPTER 2

U.S. Equal Employment Opportunity Commission

Congress created the U.S. Equal Employment Opportunity Commission (EEOC) with the passage of the Civil Rights Act of 1964.[1] EEOC's jurisdiction covers all government employers, including federal, state, and local entities and their subunits; private employers; employment agencies; educational institutions; and labor organizations. Its enforcement responsibilities arise from the Equal Pay Act of 1963;[2] Title VII of the Civil Rights Act of 1964,[3] as amended by the Equal Employment Opportunity Act of 1972;[4] the Age Discrimination in Employment Act of 1967;[5] the Americans with Disabilities Act of 1990;[6] Section 504 of the Rehabilitation Act of 1973;[7] and the Civil Rights Act of 1991.[8]

ENFORCEMENT AUTHORITY

Originally, EEOC was authorized only to investigate and conciliate complaints of employment discrimination based on race, color, religion, sex, and national origin. If EEOC's conciliation efforts failed, the charging party was obligated to file a private suit to obtain relief. Later, the Equal Employment Opportunity Act of 1972 gave EEOC power to file suit in federal court. The 1972 amendments also authorized EEOC to commence "pattern or practice" suits against private employers. Further, the act lowered the coverage threshold under Title VII for employers and unions from 25 to 15 employees or members.

EEOC's responsibilities increased in the late 1970s, when enforcement authority for the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967 was transferred from the Department of Labor to EEOC. During that time, enforcement duties regarding the employment practices of the federal government also were transferred to EEOC from the former Civil Service Commission.[9]

In the 1990s, EEOC's responsibilities increased yet again with the passage of the Americans with Disabilities Act of 1990 (ADA) and the Civil Rights Act of 1991 (CRA of 1991). Title I of the ADA[10] took effect on July 26, 1992, and prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, fringe benefits, job training, and other terms, conditions, and privileges of employment.[11] In addition to the added

[1] 42 U.S.C. §§ 2000e–2000e-17 (1994 & Supp. IV 1998).

[2] 29 U.S.C. § 206 (1994).

[3] 42 U.S.C. §§ 2000e–2000e-17 (1994 & Sup. IV 1998).

[4] 42 U.S.C. § 2000e-16 (1994 & Supp. IV 1998).

[5] 29 U.S.C. §§ 621–634 (1994).

[6] 42 U.S.C. §§ 12101–12213 (1994).

[7] Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. §§ 701–796i (1994)).

[8] 42 U.S.C. §§ 2000e–2000e-17 (1994 & Supp. IV 1998).

[9] 42 U.S.C. § 2000e-4 note (1994 & Supp. IV 1998).

[10] 42 U.S.C. §§ 12111–12117 (1994).

[11] *Id.* § 12112(a).

responsibility of investigating complaints under the ADA, the law also requires EEOC to conduct technical assistance, outreach, and education for individuals and employers affected by the law.

The CRA of 1991 expanded the coverage and relief of Title VII and overturned several Supreme Court decisions that had limited the scope of federal laws addressing employment discrimination. The CRA of 1991 broadened the jurisdiction of EEOC by applying equal employment opportunity coverage to persons employed extraterritorially and to persons serving on the staffs of or appointed by state and local elected officials, as well as Senate and presidential staff. The law also made clear that the EEOC administrative process is the means for resolving such claims.[12] The act also amended Title VII to expand the relief available to complainants, allowing for the recovery of compensatory and punitive damages. The CRA of 1991 also requires EEOC to carry out educational and outreach activities and to establish a Technical Assistance Training Institute.

Under Executive Order 12067 EEOC has responsibility for developing and implementing policies to maximize effort, promote efficiency, and eliminate conflict and duplication among the various agencies in the federal government responsible for implementation and enforcement of EEOC legislation. Further, EEOC has the authority "to issue, amend, or rescind suitable procedural regulations" to implement Title VII.[13]

Finally, EEOC is responsible for the annual review and approval of the equal employment opportunity plans, including affirmative employment components, of each department and agency of the federal government.[14] EEOC reviews and evaluates the operations of all agency equal employment opportunity programs and provides guidance to such agencies.[15]

Enforcement Procedures

EEOC enforces federal prohibitions against employment discrimination through investigation, conciliation, mediation, litigation, outreach, education, and technical assistance. EEOC's Office of Field Programs oversees the field offices that carry out most of EEOC's enforcement activities. The field offices receive and investigate complaints of discrimination and issue determinations of cause or no cause. If EEOC determines that there is reasonable cause to believe that discrimination has occurred, it will encourage the employer to voluntarily cease the unlawful employment practice through conciliation or other means.[16] If EEOC's efforts to obtain voluntary compliance fail, it may bring a civil action against any respondent named in a charge,[17] and if successful, may seek a variety of remedies, including hiring, promotion, reinstatement, benefit restoration, backpay, front pay, damages, and other affirmative relief.

EEOC's Office of Federal Operations enforces civil rights laws covering federal sector employment. After discrimination complaints are investigated initially within each agency's internal EEO process, complainants can elect to have a hearing before an EEOC administrative judge. EEOC handles any appeals from final determinations of the federal agencies upon request of the complainant.

Budget Analysis

Budgets

The passage of new legislation and the expansion of existing civil rights statutes over the last decade have increased EEOC's responsibilities and, consequently, its workload. The agency's funding

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[12] The act made Title VII and the ADA applicable to persons employed extraterritorially. The act made Title VII, ADEA, and the ADA applicable to employees serving on the staffs of or appointed by state and local elected officials. EEOC, *Fiscal Year 1993 Budget Request*, p. 8.

[13] 42 U.S.C. § 2000e-12(a) (1994).

[14] *See generally* 29 C.F.R. §§ 1613.201–1690.303 (2000).

[15] *See generally* 29 C.F.R. §§ 1690.101 *et seq.* (2000).

[16] 29 C.F.R. § 1601.24(a) (2000).

[17] *Id.* § 1601.27.

and staffing levels have not increased in accordance with this rising workload. Funding requests decreased between FY 1996 and FY 1998 (see table 2.1). In fact, after adjusting for inflation, the FY 1998 request was lower than the FY 1994 request by almost 3 percent (see table 2.2 and figure 2.1). In addition, the FY 1998 request was lower, in actual dollars, than the FY 1997 request by more than $20 million. Every year since FY 1999 the President has requested increased funding for EEOC (see table 2.1).

In the past seven years, Congress met the President's request only once (see table 2.1). In FY 1999, the Congressional appropriation matched the request of $279 million. However, in FY 2000 Congress again funded the agency by an amount that was substantially lower than that requested. The FY 2000 appropriation was 10 percent below the President's request for that year. Further, in real terms, the FY 2000 appropriation represented a 1.6 percent reduction in spending power compared with the previous year.

TABLE 2.1

EEOC Funding History
(in actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	$234,845,000	$230,000,000
1995	245,720,000	233,000,000
1996	268,000,000	233,000,000
1997	268,000,000	239,740,000
1998	246,000,000	242,000,000
1999	279,000,000	279,000,000
2000	312,000,000	280,900,000
2001	322,000,000	304,000,000

SOURCE: EEOC, Budget Requests for 1998–2001; Executive Office of the President, Office of Management and Budget, Budgets of the United States Government, 1994–1997, appendix; Executive Office of the President, Office of Management and Budget, fax, Dec. 21, 2000.

TABLE 2.2

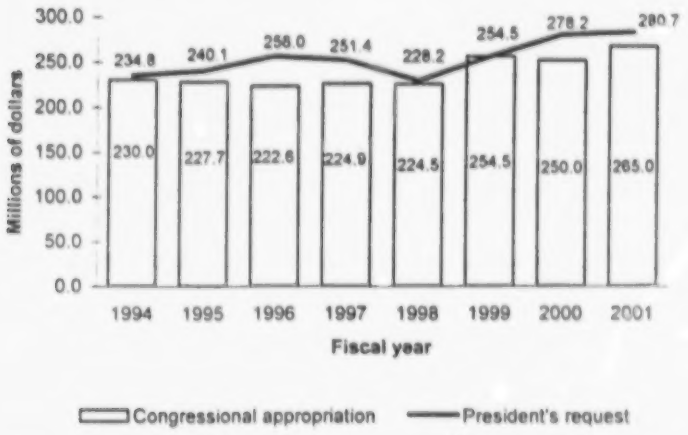
EEOC Funding History
(in millions of constant 1994 dollars)

Fiscal year	President's request	Congressional appropriation
1994	$234.8	$230.0
1995	240.1	227.7
1996	256.0	222.6
1997	251.4	224.9
1998	228.2	224.5
1999	254.5	254.5
2000	278.2	250.5
2001	280.7	265.0

NOTE: Estimates based on table 2.1.

FIGURE 2.1

EEOC Funding History
(in constant 1994 dollars)



NOTE: Estimates based on table 2.1.

Staffing and Workload

EEOC's FTE levels also have not kept up with the increase in the agency's responsibilities and workload. In FY 1998, EEOC's FTE level fell to 2,544 (see table 2.3), which was 10 percent lower than the FY 1994 FTE level of 2,932 and 24.2 percent lower than the FY 1981 FTE level of 3,358.[18] Conversely, in FY 1998, EEOC received 37,687 more complaints than it received in FY 1981,[19] an increase of 67 percent.

In FY 1999, EEOC added 49 FTEs, an amount still lower than that in FY 1994 (see figure 2.2). Further, the staffing levels requested for FY 1998 and FY 1999 were both below the actual FTE level for 1994, by 5.4 percent and 3 percent, respectively.

These declines in staffing are due to limited budget resources and come at a time when the agency's enforcement obligations have been substantially expanded because of new statutory responsibilities. From FY 1994 to FY 1999, the number of complaints EEOC received each year was dramatically higher than the annual number of complaints received from FY 1981 to FY 1992.[20] In FY 1985, EEOC received 72,002 complaints, the highest number of complaints received prior to FY 1993. Yet, in FY 1994, EEOC received an all time high of 93,915 private sector complaints. Since then, the number of complaints received has remained high (see table 2.4).

[18] U.S. Equal Employment Opportunity Commission (EEOC), Charge Data System; USCCR, *Funding Federal Civil Rights Enforcement*, June 1995, (hereafter cited as USCCR, 1995 Budget Report). USCCR, 1995 Report, p. 41.

[19] EEOC received 56,228 complaints in FY 1981. USCCR, 1995 Report, p. 41.

[20] USCCR, 1995 Report, p. 41.

TABLE 2.3

EEOC Staffing History
(FTE levels)

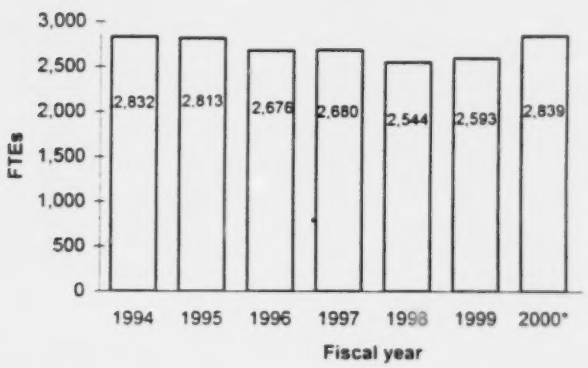
Fiscal year	Requested	Actual
1994	3,000	2,832
1995	3,020	2,813
1996	3,219	2,676
1997	3,022	2,680
1998	2,680	2,544
1999	2,748	2,593
2000	2,946	2,839*
2001	3,055	–

*estimate

SOURCE: Executive Office of the President, Office of Management and Budget, Budgets of the United States Government, 1994–2001, appendix.

FIGURE 2.2

EEOC Staffing History



*estimate

SOURCE: Executive Office of the President, Office of Management and Budget, Budgets of the United States Government, 1994–2001, appendix.

As noted previously, the greatest increase in EEOC's enforcement responsibilities occurred in the early 1990s with the passage of the Civil Rights Act of 1991 and the Americans with Disabilities Act of 1990. Of the 82,428 complaints in FY 1999, 18,407, or 22 percent, were charges filed under the ADA.[21]

Although the Priority Charge Handling Procedures (PCHP), implemented in 1995, have enabled EEOC to increase the number of annual resolutions while reducing the pending inventory of charges (see tables 2.4 and 2.5), the number of cases in which EEOC reached a settlement through merit resolution (a case settled, litigated, or conciliated successfully, and conciliated unsuccessfully, as well as a complaint withdrawn with benefits) remains consistently low. In FY 1994, 15.2 percent of the total cases resolved were settled through some sort of merit resolution (see table 2.5). By FY 1996, the number of merit resolutions had decreased to 9,225, accounting for only 9.1 percent of the total number if resolutions. Although the agency experienced a slight increase in merit resolutions in FY 1999, the number of merit resolutions during the 1990s remains significantly lower than it was in the early 1980s when merit resolutions accounted for as much as 32 percent of all resolutions.[22]

Over this same period, there was a noticeable spike in the percentage of cases for which no cause determinations were issued. Between FY 1996 and FY 1999, no cause decisions made up approximately 60 percent of all cases, up from 46 percent in FY 1994. Between FY 1986 and FY 1989, no cause determinations accounted for an average of only 15 percent of all cases.[23]

TABLE 2.4

EEOC Private Sector Enforcement

Fiscal year	Complaints received	Complaints resolved	Pending inventory
1994	93,915	69,017	96,945
1995	91,705	89,308	98,269
1996	85,480	101,727	79,448
1997	90,090	105,800	64,333
1998	87,876	101,429	52,281
1999	84,428	97,764	40,225

SOURCE: EEOC, Charge Data System; USCCR, *Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Employment Opportunity Commission's Enforcement Efforts*, September 2000.

[21] EEOC, Charge Data System.

[22] EEOC, Charge Data System. *See also* USCCR, *Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Opportunity Commission's Enforcement Efforts*, September 2000, chap. 5.

[23] USCCR, 1995 Budget Report, p. 42, graph.

TABLE 2.5

EEOC Resolutions

Fiscal year	Total resolutions	Merit resolutions	No cause decisions	Administrative closures
1994	69,017	10,507 (15.2%)	31,962 (46.2%)	26,648 (38.6%)
1995	89,308	10,396 (11.6%)	44,524 (49.9%)	34,388 (38.5%)
1996	101,727	9,225 (9.1%)	60,576 (59.5%)	31,926 (31.4%)
1997	105,800	11,609 (11.0%)	64,288 (60.8%)	29,903 (28.3%)
1998	101,429	12,610 (12.4%)	61,702 (60.8%)	27,117 (26.7%)
1999	97,764	16,106 (16.5%)	58,506 (59.4%)	23,602 (24.1%)

SOURCE: EEOC, Charge Data System; USCCR, *Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Employment Opportunity Commission's Enforcement Efforts*, September 2000.

Although the PCHP has helped EEOC respond to monetary and staffing restraints, as well as an increasing workload, EEOC's transformation into a viable enforcement agency has been inadequate.[24] This is to be expected in "an era where agency resources do not adequately reflect its caseload or the importance of its mission."[25] As a result, charge categorization provides an immediate monetary remedy that often results in complaints being erroneously dismissed as having no reasonable cause.[26]

Workload demands for EEOC have continued to rise in the federal sector. Federal hearing and appeal receipts both steadily increased between FY 1994 and FY 1999 (see table 2.6). During this same period, cases per attorney grew, from 146 appeals in FY 1994 to 192 in FY 1998. Still, even though the productivity of hearings and appellate attorneys increased, the staffing level has not increased commensurate with the mounting workload.[27] Consequently, the pending inventory of cases in federal sector enforcement increased by 155 percent from FY 1994 to FY 1999, and the average number of cases per investigator has grown from 51 charges in FY 1990 to 77 charges in FY 1998.[28]

[24] Citizens' Commission on Civil Rights, *The Test of Our Progress: The Clinton Record on Civil Rights*, 1999, p. 163.

[25] USCCR, *Overcoming the Past, Focusing on the Future*, p. 120.

[26] Ibid., p. 33.

[27] EEOC, *FY 2000 Budget Request*, p. 52.

[28] Citizens' Commission on Civil Rights, *The Test of Our Progress*, p. 165.

TABLE 2.6

EEOC Federal Sector Enforcement

Fiscal year	Hearing receipts	Appeal receipts	Total pending inventory
1994	10,712	7,141	9,540
1995	10,515	8,152	12,865
1996	10,677	8,001	16,651
1997	11,198	8,453	20,155
1998	12,218	8,480	23,193
1999	12,637	8,690	24,356
2000*	12,963	8,951	–
2001*	14,098	9,220	–

*estimate

SOURCE: EEOC, Budget Requests for 1998–2001; USSCR, 1995 Budget Report.

Overwhelming workload demands have had a negative impact on EEOC's complaint processing time. During FY 1998, the average time it took to process a private sector discrimination charge was 10.3 months, which is dramatically higher than the FY 1980 average of 3 to 6.5 months.[29] Further, it took an average of 21.5 months before federal sector charging parties had their complaints processed in FY 1998, a number that significantly increases when hearing and appellate proceedings are required.[30]

Summary

Despite the addition of enforcement responsibilities, most notably resulting from the ADA, in terms of real spending power, EEOC's budget had not been increased until FY 1999, when Congress matched the President's request of $279 million. In real dollars, this was an increase of nearly 13.4 percent from the FY 1998 appropriation. This departure from traditional budget cuts in EEOC's spending power enabled the agency to begin rehabilitation from the devastating effects of perennial staffing and budget reductions.[31] However, just as this process of rebuilding had begun, the FY 2000 appropriation was $31 million below the requested amount for that year. More importantly, in real dollars, the FY 2000 figure is 2 percent below the FY 1999 figure. The FY 2001 request seeks to regain some ground lost in FY 2000 in the face of growing workloads.

The FY 2001 budget requests $322 million, a $41 million increase over the FY 2000 appropriation, and an additional 216 FTEs. However, EEOC projects an increase in private sector complaint receipts.[32] Therefore, additional staff will be needed to reduce the already high average private sector enforcement processing time while continuing to decrease the pending inventory of cases. More importantly, an increase in FTE levels will help make EEOC private enforcement more advantageous to complainants. The forecast for EEOC's federal sector enforcement without

[29] Ibid. According to OMB, private sector processing time had decreased to 8.8 months in FY 1999. Labor Branch, Office of Management and Budget staff, interview in Washington, DC, Sept. 21, 2000 (hereafter cited as OMB interview), attachment, p. 15.

[30] EEOC, *FY 2000 Budget Request*, p. 59.

[31] USCCR, *Overcoming the Past, Focusing on the Future*, p. 68, citing Paul M. Igasaki, Acting Chairman, EEOC, statement before the U.S. House of Representatives, Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, Mar. 3, 1998, p. 4.

[32] EEOC, *FY 2001 Budget Request*, p. 41.

additional staff is grave. EEOC estimates that by FY 2001 the pending inventory of federal cases will rise to 34,565, an increase of 42 percent over the FY 1999 amount, and the pending inventory will grow to 22 months for hearings and 34 months for appeals,[33] compared with the already unacceptable FY 1999 levels. Delays in processing undermine the fairness and effectiveness of the federal enforcement system and discourage people from coming forward to seek restitution for well-founded complaints of discrimination.

[33] Ibid., pp. 85–92.

CHAPTER 3

Office of Federal Contract Compliance Programs, U.S. Department of Labor

In 1965 President Johnson issued Executive Order 11246,[1] which directs federal departments and agencies to include nondiscrimination and affirmative action requirements in all federal contracts, including federally assisted construction contracts. Pursuant to that direction, the Secretary of Labor created the Office of Federal Contract Compliance within the U.S. Department of Labor (DOL), which was later renamed the Office of Federal Contract Compliance Programs (OFCCP).[2] Initially, enforcement was carried out by the various contracting agencies, under the direction of OFCCP. In 1978 the entire federal contract compliance program was consolidated into DOL, transferring the compliance activities of 11 agencies to OFCCP.[3]

ENFORCEMENT AUTHORITY

The enforcement authority of OFCCP encompasses several statutes in addition to Executive Order 11246, and the scope of that authority has expanded over the years. In 1972, Congress extended the nondiscrimination and affirmative action requirements for federal contractors to include Vietnam-era and special disabled veterans.[4] In the next year, Section 503 of the Rehabilitation Act of 1973[5] added a requirement that covered government contractors engage in nondiscrimination and affirmative action for qualified individuals with disabilities.

In 1990, OFCCP was assigned to share responsibility for enforcing the EEO requirements in apprenticeship and training programs with DOL's Bureau of Apprenticeship and Training.[6] OFCCP also has enforcement responsibilities under the Immigration Reform and Control Act of 1986 (IRCA),[7] Title I of the Americans with Disabilities Act of 1990,[8] and the Family and Medical Leave Act of 1993.[9]

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[1] Exec. Order No. 11246, 3 C.F.R. § 339 (1964–65), *reprinted in* 42 U.S.C. § 2000e note (1994).

[2] OFCCP had two antecedents: a fair employment practices committee that President Roosevelt created on the eve of the Second World War and the President's Committee on Equal Employment Opportunity established in 1961. *See* Exec. Order No. 10925 (1961); 3 C.F.R. § 339 (1959–63).

[3] Exec. Order No. 12086, 43 Fed. Reg. 46501 (1978).

[4] Vietnam Era Veterans' Readjustment Assistance Act of 1972, Pub. L. No. 92-540, § 503(a), 86 Stat. 1074, 1097 (codified at 38 U.S.C. §§ 2011–2013 (1994)).

[5] 29 U.S.C. § 794 (1994).

[6] National Apprenticeship Act of 1937, 50 Stat. 664 (*amended by* District of Columbia Home Rule Act, also known as the District of Columbia Self-Government and Government Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) and codified at 29 U.S.C. §§ 50–50b (1994)); 29 C.F.R. Part 30 (2000).

[7] Pub. L. No. 99-603, 100 Stat. 3359 (codified at scattered sections of U.S.C.).

[8] 42 U.S.C. § 12111–12117 (1994).

[9] Pub. L. No. 103-3, 107 Stat. 6 (1993).

In FY 1998, for example, the federal government contracted with approximately 200,000 worksites employing more than 28 million workers.[10] Under Executive Order 11246, federal contractors are subject to antidiscrimination and affirmative action requirements provisions in the performance of any contract for more than $10,000, or if they have several contracts whose aggregate value is more than $10,000. In addition, employers with 50 or more employees and a contract of $50,000 or more must prepare and annually update a written affirmative action program (AAP). Special rules apply to construction contractors, who are prohibited from discriminating and must take specified affirmative action steps in the performance of any contract in excess of $10,000. With respect to disability discrimination, coverage applies to any single contract in excess of $10,000, and for the disabled and Vietnam-era veterans program, contracts of $25,000 or more are subject to these requirements.[11] Under both laws, contractors with 50 employees and a $50,000 contract must maintain written AAPs.

Enforcement Procedures

The enforcement activities of OFCCP focus on the following areas: (1) conducting compliance reviews and investigating complaints; (2) negotiating conciliation agreements and letters of commitment from contractors and subcontractors who are in violation of regulatory requirements; (3) monitoring contractor compliance and compliance reports; (4) forming links between contractors and DOL job training programs; (5) providing technical assistance to aid contractor understanding of and compliance with federal nondiscrimination requirements; and (6) recommending enforcement actions to the Solicitor of DOL, its chief legal officer.[12] A majority of the enforcement time is devoted to complaint investigations and compliance reviews. If voluntary compliance cannot be achieved, OFCCP has several options: (a) continue conciliation efforts with the contractor; (b) refer the matter to the Solicitor of Labor to institute formal, administrative enforcement proceedings; or (c) refer the case to the Attorney General for the appropriate litigation.[13]

Budget Analysis

The Commission noted in its 1995 report on federal funding for civil rights enforcement, that after 1978, when the compliance activities of 11 agencies were consolidated into OFCCP, resources provided for OFCCP steadily dropped.[14] Unfortunately, OFCCP's budget did not improve significantly until FY 1997. In accordance, staffing levels fell between FY 1994 and FY 1997 and have not returned to FY 1994 levels. Limited resources and the decline in available FTEs appear to have affected the amount of compliance activity, the quality and results of such activity, and the ability to conduct more systemic compliance reviews.

Budgets

Although OFCCP's budget requests have increased almost 38 percent in actual dollars since FY 1994, Congress has consistently appropriated an amount lower than what was requested (see table 3.1). Although OFCCP's budget has increased 15.8 percent in real terms since FY 1994, this increase has not been consistent. Between FY 1994 and FY 1997, Congressional appropriations decreased by 2 percent in real terms (see table 3.2).

While OFCCP has experienced an increase in funding since FY 1997, the agency's budget may not keep up with inflation in the future. For example, the FY 1999 request was lower than the FY 1998

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[10] U.S. Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs (OFCCP), *Salaries and Expenses FY 1999*.

[11] OFCCP, "What is the OFCCP?" accessed at <http://www.dol.gov/dol/esa/public/aboutesa/org/ofccp/ofcinfo.htm>.

[12] Ibid.

[13] 41 C.F.R. §§ 60–1.26(a)(2), (c), (e) (2000).

[14] USCCR, *Funding Federal Civil Rights Enforcement*, June 1995, p. 63 (hereafter cited as USCCR, 1995 Budget Report).

request in both actual and real terms (see table 3.1 and figure 3.1). Further, in both actual and real dollars, the President's FY 2001 request is below the FY 2000 request.

TABLE 3.1

OFCCP Funding History
(in actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	$55,398,000	$56,443,000
1995	59,902,000	58,928,000
1996	63,831,000	56,851,000
1997	65,460,000	59,058,000
1998	68,728,000	62,271,000
1999	67,836,000	65,461,000
2000	76,417,000	73,250,000
2001	76,308,000	76,000,000

SOURCE: Executive Office of the President, Office of Management and Budget, Budgets of the United States Government, 1994–1997, appendix; OFCCP, Budget Request for FY 1996–2001; Executive Office of the President, Office of Management and Budget, fax, Dec. 21, 2000.

TABLE 3.2

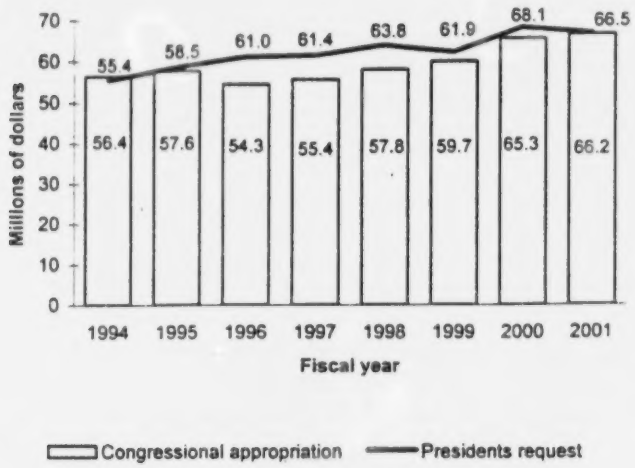
OFCCP Funding History
(in millions of constant 1994 dollars)

Fiscal year	President's request	Congressional appropriation
1994	$55.4	$56.4
1995	58.5	57.6
1996	61.0	54.3
1997	61.4	55.4
1998	63.8	57.8
1999	61.9	59.7
2000	68.1	65.3
2001	66.5	66.2

NOTE: Estimates based on table 3.1.

FIGURE 3.1

DOL/OFCCP Funding History
(in constant 1994 dollars)



SOURCE: Executive Office of the President, Office of Management and Budget, Budgets of the United States Government, 1994–1997, appendix; OFCCP, Budget Request for FY 1996–2001; Executive Office of the President, Office of Management and Budget, fax, Dec. 21, 2000.

Staffing and Workload

The actual FTE level declined 7.4 percent between FY 1994 and FY 1999, from 785 FTEs to 727 FTEs (see table 3.3 and figure 3.2).[15] Meanwhile, the most dramatic decline occurred between FY 1994 and FY 1997, resulting in a 9.3 percent decrease in FTEs. That number of FTEs was the lowest number of staff that OFCCP had had in the past two decades.

TABLE 3.3

OFCCP Staffing History

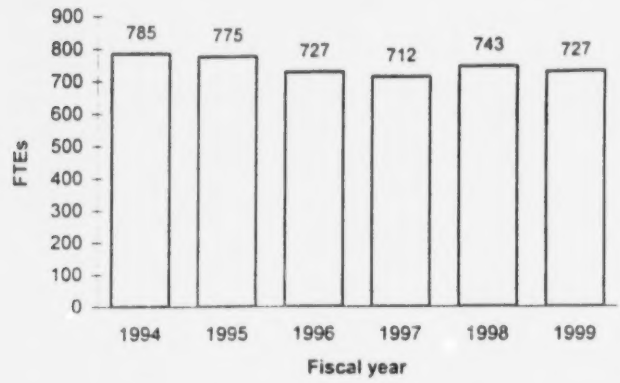
Fiscal year	FTE level
1994	785
1995	775
1996	727
1997	712
1998	743
1999	727

SOURCE: OFCCP, Budget Requests FY 1996–2001; USCCR, 1995 Budget Report.

[15] However, OFCCP has not been hiring to its approved FTE ceiling. OMB interview, attachment, p. 20. According to the OFCCP Web site, the agency was allocated 739 FTEs in FY 1997, 788 FTEs in FY 1998, 823 FTEs in FY 1999, and 800 FTEs in FY 2000. OFCCP, "Quick Facts," accessed at <http://www.dol.gov/dol/esa/public/media/reports/ofccp/ofqfacts.htm>.

FIGURE 3.2

DOL/OFCCP Staffing History



SOURCE: OFCCP, Budget Requests FY 1996–2001; USCCR, 1995 Budget Report.

These budget and staffing reductions come at a time when OFCCP's enforcement responsibilities have expanded. Along with obligations brought on by Title I of the ADA, a Memorandum of Understanding (MOU) exists with EEOC that authorizes OFCCP to negotiate for damages under the Civil Rights Act of 1991.[16]

During this period of reduced funding and staffing, OFCCP complaint resolutions steadily decreased (see table 3.4). In FY 1999, OFCCP resolved 489 fewer complaints than in FY 1994, a decrease of 61 percent. Moreover, OFCCP resolved fewer complaints in FY 1994 than in any of the 13 preceding years. Specifically, the FY 1994 figure was 69 percent smaller than the FY 1982 figure of 2,589 complaint resolutions.

While complaint resolutions have been diminishing, the actual number of compliance reviews conducted by OFCCP initially declined during this period of decreased funding and staffing (see table 3.4). Compliance reviews decreased 17 percent between FY 1994 and FY 1996, a year in which the number of compliance reviews reached an all time low of 3,476. However, OFCCP was able to increase its compliance workload by 1999 despite continued inadequate staffing levels. This rise was partly attributed to the growing workload demands resulting from glass ceiling issues being incorporated into compliance reviews.[17] Still, compliance enforcement must increase considerably to meet the average levels of the past decade.[18]

[16] 46 Fed. Reg. 7435 (Jan. 23, 1981) ("EEOC: Coordination of Functions—Proposed Changes to Memorandum of Understanding," 63 Fed. Reg. 68,764 (Dec. 14, 1998)).

[17] OFCCP, *Salaries and Expenses FY 2001*, p. 36 (hereafter cited as OFCCP, FY 2001 Budget Request).

[18] Citizens' Commission on Civil Rights, *The Test of Our Progress: The Clinton Record on Civil Rights*, 1999, p. 168.

TABLE 3.4

OFCCP Workload History

Fiscal year	Complaints resolved	Pending inventory	Compliance reviews
1994	802	–	4,179
1995	566	368	3,991
1996	473	282	3,476
1997	372	265	3,750
1998	294	350	5,707
1999	313	284	5,875
2000*	326	296	5,962
2001*	342	311	–

*estimate

SOURCE: OFCCP, Budget Requests FY 1996–2001; USCCR, 1995 Budget Report

In spite of this recent rise in compliance activity, decreases in staff and complaint investigations have adversely influenced the effectiveness of OFCCP's work (see table 3.5). In FY 1994, the number of individuals receiving backpay awards totaled 10,986, the highest number of recipients in the past two decades. However, that year the amount of relief received by those individuals was significantly lower than the amount of backpay awarded in FY 1989.[19] By FY 1996, the number of people receiving relief fell to 4,203 as did the total value of benefits. In the years since, numbers of recipients and their benefits have remained substantially lower than the FY 1994 figures.

TABLE 3.5

OFCCP Financial Agreements

Fiscal year	Persons receiving backpay	Backpay monetary benefits
1994	10,986	$14,400,000
1995	6,704	12,284,953
1996	4,203	8,216,187
1997	4,435	10,791,520
1998	6,306	10,524,000

SOURCE: OFCCP, Budget Requests FY 1996–2001; USCCR, 1995 Budget Report

[19] In 1989, 6,634 people received $21.6 million in backpay. USCCR, 1995 Budget Report, p. 67.

Summary

The request for FY 2001 asks for an increase of 86 FTEs over the FY 1999 staff level. At this funding level, OFCCP expects to devote 523 FTEs as compliance officers, resulting in an increase in enforcement activities.[20] In the face of a heavy workload, staffing enhancements are necessary if OFCCP is to adequately address the persistent problem of discrimination in the workplaces of federal contractors.

[20] OFCCP, FY 2001 Budget Request, p. 34.

CHAPTER 4

Civil Rights Division, U.S. Department of Justice

The Civil Rights Division (CRD) of the U.S. Department of Justice has grown enormously since its creation in 1957. Although its initial focus was on voting and post-Civil War criminal statutes, the Civil Rights Act of 1964[1] and more recent laws and executive orders have greatly expanded its authority. The Civil Rights Division has 10 subject-matter sections, an Office of Redress Administration, and an Administrative Management Section. The 10 units are the Appellate Section, the Coordination and Review Section, the Civil Rights Prosecution Section, the Educational Opportunities Section, the Employment Litigation Section, the Housing and Civil Enforcement Section, the Special Litigation Section, the Disability Rights Section, the Voting Rights Section, and the Office of Special Counsel.

ENFORCEMENT AUTHORITY

Under the Civil Rights Act of 1964, CRD was given the authority to receive, investigate, and litigate complaints of discrimination in places of public accommodation, schools and colleges, public facilities owned by state or local governments, programs or activities that receive federal financial assistance, and places of employment. The Division's units enforce civil rights laws in the following areas:

- ***Education.*** In the area of education, the Division focuses on the elimination of segregation in public schools and colleges and the eradication of discriminatory barriers that limit equal educational opportunities because of race, color, religion, sex, or national origin. The Division investigates and litigates cases under (1) Title IV of the Civil Rights Act of 1964,[2] (2) Title IX of the Education Amendments of 1972,[3] (3) the Equal Educational Opportunities Act of 1974,[4] and (4) the Constitution. In addition, the Department of Education (DOEd) may refer discrimination cases to the Division for enforcement against educational institutions, public or private, that receive federal funds.
- ***Employment.*** With regard to employment, CRD enforces the following statutes: (1) Title VII of the Civil Rights Act of 1964,[5] as amended by the Equal Employment Opportunity Act of 1972;[6] (2) the Pregnancy Discrimination Act of 1978;[7] and (3) the Civil Rights Act of 1991.[8] The majority of CRD's employment

[1] 42 U.S.C. §§ 2000a *et seq.* (1994).

[2] 42 U.S.C. §§ 2000c–2000c-9 (1994).

[3] 20 U.S.C. §§ 1681–1688 (1994).

[4] Pub. L. No. 93-380, Title II, 88 Stat. 484 (codified at 20 U.S.C. §§ 1701–1758 (1994)).

[5] 42 U.S.C. §§ 2000e–2000e-17 (1994 & Supp. IV 1998).

[6] 42 U.S.C. § 2000e-16 (1994 & Supp. IV 1998).

[7] Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k) (1994)).

[8] 42 U.S.C. §§ 2000e *et seq.* (1994 & Supp. IV 1998).

cases regard pattern and practice enforcement actions against state and local governments.

- ***Housing.*** CRD also enforces federal fair housing laws that proscribe discrimination in housing, the provision of credit, and in places of public accommodation based on race, color, religion, sex, disability, familial status, national origin, age, or religion. The Division investigates complaints and litigates cases under Title VIII of the Civil Rights Act of 1968,[9] as amended by the Fair Housing Amendments Act of 1988;[10] Title II of the Civil Rights Act of 1964;[11] and the Equal Credit Opportunity Act.[12]
- ***Voting Rights.*** The Division enforces the Voting Rights Act of 1965,[13] as amended; the Voting Accessibility for the Elderly and Handicapped Act;[14] the Uniformed and Overseas Citizens Absentee Voting Act;[15] and the National Voter Registration Act of 1993.[16] The Division brings lawsuits to remedy discrimination in elections conducted in all jurisdictions and also has the authority to commence a civil action against any state or political subdivision that has imposed or applied a discriminatory device or procedure.[17]
- ***Disabilities.*** The Division's Disability Rights Section has enforcement responsibility for titles II and III of the ADA, which prohibit discrimination based on disability in state and local government employment, public accommodations, commercial facilities, and the programs and services of state and local governments. Under Title II, the Section initiates litigation upon referral from the designated federal agencies that conduct investigations under Title II. The Section also is responsible for investigating complaints of discrimination in public accommodations and commercial facilities. The Section can initiate litigation when it finds a pattern or practice of discrimination or an issue of general public importance.[18] The Section also is required to provide technical assistance to both covered entities and to the public. Finally, the Section certifies that state and local building codes meet the ADA accessibility requirements. In addition to ADA enforcement, the Disability Rights Section has the responsibility to coordinate federal enforcement of statutes that prohibit discrimination on the basis of disability in programs that receive federal financial assistance.
- ***Immigration.*** In 1994, the Division assumed responsibility for enforcement of Section 274B of the Immigration and Nationality Act,[19] which makes it unlawful to discriminate in hiring, recruiting, or discharging an individual because of national origin or citizenship status. The Division also investigates and prosecutes charges of document abuse and retaliation under the act.

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[9] 42 U.S.C. §§ 3601–3619 (1994 & Supp. IV 1998). In 1988, Congress officially designated Title VIII of the Civil Rights Act of 1968 the "Fair Housing Act," the name by which it was commonly known.

[10] 42 U.S.C. §§ 3601–3619, 3631 (1994 & Supp. IV 1998).

[11] *Id.*

[12] Pub. L. No. 93-495, 88 Stat. 1521 (codified at 15 U.S.C. §§ 1691–1691c (1994 & Supp. IV 1998)).

[13] 42 U.S.C. §§ 1973–1973bb-1 (1994).

[14] Pub. L. No. 98-435, 98 Stat. 1678 (codified at 42 U.S.C. §§ 1973ee–1973ee-6 (1994)).

[15] Pub. L. No. 99-410, 100 Stat. 924 (codified at 42 U.S.C. §§ 1973ff–1973ff-6 (1994 & Supp. IV 1998)).

[16] Pub. L. No. 103-31, 107 Stat. 77 (codified at 42 U.S.C. §§ 1973gg-1– 1973gg-10 (1994 & Supp. IV 1998)).

[17] 42 U.S.C. § 1973j(d), § 1973aa-2 (1994).

[18] 42 U.S.C. § 12188(b)(2) (1994).

[19] 8 U.S.C. § 1324b (1994).

Violations of the federal Constitution and federal statutes created in the days immediately following the Civil War are also within the Division's jurisdiction.[20] In addition, Congress has included criminal provisions in some of its modern civil rights legislation containing largely civil remedies. Under these statutes protecting a variety of federal rights (e.g., access to housing, voting, employment, education, public accommodations, and state-owned facilities), the Division may receive, investigate, and prosecute allegations of criminal violations.[21] CRD also prosecutes persons engaged in slavery or involuntary servitude.[22] Recently, most of the latter cases have involved migrant or undocumented workers and homeless persons.

The Special Litigation Section enforces the Civil Rights of Institutionalized Persons Act,[23] which authorizes the Division to institute civil actions to remedy violations of federal rights of persons at certain state or local residential institutions.[24] Under the act, coverage includes residences for the developmentally disabled, juvenile facilities, nursing homes, and correctional facilities, such as prisons and jails.[25] The federal rights protected at covered institutions include the quality of care, living conditions (e.g., adequacy of food, clothing, and shelter), recreational facilities, medical treatment, supervision, training programs, and institutional violence against residents. The Section also enforces Title III of the Civil Rights Act of 1964,[26] the Freedom of Access to Clinic Entrances Act,[27] and Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994,[28] and conducts Title II complaint investigations under the ADA.

In 1988, the Division established the Office of Redress Administration after passage of the Civil Liberties Act of 1988.[29] Under this act, the Attorney General was assigned responsibility for providing payments to eligible individuals of Japanese ancestry who were evacuated, relocated, or interned during World War II.

Coordination Responsibilities

The Division's Coordination and Review Section is responsible for coordinating the civil rights enforcement activities of other federal agencies. This authority derives both from statute and from Executive Order 12250 of 1980.[30] The Section performs coordination duties under Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.[31] Among other things, the Division was given the authority to develop and assist other agencies in developing guidelines and regulations for civil rights enforcement; aid other agencies in meeting their responsibilities under antidiscrimination directives; and evaluate regularly the civil rights laws and regulations with the goal of improving enforcement.[32] The executive order imposes corresponding duties on the other

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[20] 18 U.S.C. §§ 479, 1503 (1994).

[21] *E.g.*, 18 U.S.C. § 245 (1994) (covers a variety of protected minority rights); 42 U.S.C. § 1973j(a)–(c) (1994) (certain voting rights involving race or color); 42 U.S.C. § 1973aa-3 (1994) (voting rights of language minorities); 42 U.S.C. § 1973bb(b) (1994) (right of 18-year-olds to vote); and 42 U.S.C. § 3631 (1994) (housing).

[22] 18 U.S.C. §§ 1581, 1584 (1994).

[23] 42 U.S.C. §§ 1997–1997j (1994 & Supp. IV 1998).

[24] 42 U.S.C. § 1997a(a) (1994).

[25] *Id.* § 1997(1).

[26] 42 U.S.C. §§ 2000b *et seq.* (1994).

[27] Pub. L. No. 103-259, 108 Stat. 694 (codified at 18 U.S.C. § 248 (1994)).

[28] Pub. L. No. 103-322, 108 Stat. 1796 (codified at 42 U.S.C. § 14141 (1994)).

[29] 50 U.S.C. app. §§ 1589b *et seq.* (1994).

[30] Exec. Order No. 12,250, 3 C.F.R. § 298 (1981), *reprinted in* 42 U.S.C. § 2000d-1 note (1994).

[31] 42 U.S.C. § 2000d-1 (§ 1-201(c)) (1994 & Supp. IV 1998). CRS formerly performed coordination duties under Section 504 of the Rehabilitation Act of 1973. A March 1995 reorganization transferred this responsibility to the Disability Rights Section. USCCR, *Funding Federal Civil Rights Enforcement*, June 1995, p. 26 (hereafter cited as USCCR, 1995 Budget Report).

[32] 42 U.S.C. §§ 1-202–1-207.

federal agencies to cooperate with the Attorney General and thus the Division in meeting its responsibilities under the order.[33]

BUDGET ANALYSIS

Budgets

FY 1994 to FY 1998. Between FY 1994 and FY 1998, the CRD budget requests fluctuated from year to year while Congressional appropriations for the Division remained relatively stable (see table 4.1). In addition, Congressional appropriations remained below the President's budget request during that time.

Although the $71.9 million was requested for CRD in FY 1995, Congress approved only $62.6 million (see table 4.1). That amount represented a 4 percent increase over the FY 1994 appropriation. In FY 1996, Congress again increased CRD's budget by $2 million in actual dollars, yet in terms of real spending power, CRD's budget actually decreased (see table 4.2). In real dollars, the budget provided by Congress in FY 1997 was again lower than the previous year's, and 2.3 percent lower than the Division's FY 1994 appropriation. Further, the FY 1998 budget appropriation equaled the FY 1994 appropriation in real dollars (see figure 4.1). This relatively flat pattern of appropriations prior to FY 1999 is alarming considering that, in 1995, the U.S. Commission on Civil Rights noted that the Civil Rights Division's budget appropriations had increased substantially between FY 1981 and FY 1993.[34]

FY 1999 to FY 2001. Since FY 1999, the President's requests for CRD funding have increased by more than $10 million each year. In both real and actual dollars, CRD's FY 1999 budget was considerably higher than the budget appropriations between FY 1994 and FY 1998 (see tables 4.1 and 4.2). However, more than $8 million of the FY 1999 budget was reprogrammed for the administration of Y2K modifications and Japanese redress payments, and thus, did not go toward Division enforcement.

The FY 2000 request was the highest request made during the entire period between FY 1994 and FY 2000. Correspondingly, the FY 2000 appropriation was the highest appropriation during the period. Nonetheless, funding for CRD is insufficient. In July 2000, then Acting Assistant Attorney General Bill Lann Lee stated that the FY 2000 budget increase "has not made up for the fact that for many years, the Civil Rights Division has basically been running on empty."[35]

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[33] *Id.* § 1-401.

[34] USCCR, 1995 Budget Report, p. 26.

[35] U.S. Congress, House Committee on the Judiciary, Subcommittee on the Constitution, *Oversight Hearing on the Civil Rights Division of the Justice Department*, July 12, 2000, p. 129 (hereafter cited as 2000 DOJ Oversight Hearing).

TABLE 4.1

DOJ/CRD Funding History
(in actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	$59,000,000	$59,956,000
1995	71,895,000	62,602,000
1996	65,304,000	64,546,000
1997	69,468,000	62,419,000
1998	67,477,000	64,689,000
1999	71,594,000	77,267,000*
2000	82,200,000	82,150,000
2001	97,922,000	92,000,000

*This budget authority reflects the 1999 effect of the Sept. 14, 1999, reprogramming (Y2K transfer of 3,805,000 and 4,225,000 Japan redress payments).

NOTE: Information for the FY 1994 request reflects data provided by OMB. OMB interview, attachment.

SOURCE: DOJ/CRD, Congressional Budget Submissions, Salaries and Expenses, FY 1994–2001. (For individual sections, also see Summary Resources by each program for these years.) Executive Office of the President, Office of Management and Budget, fax, Dec. 21, 2000.

TABLE 4.2

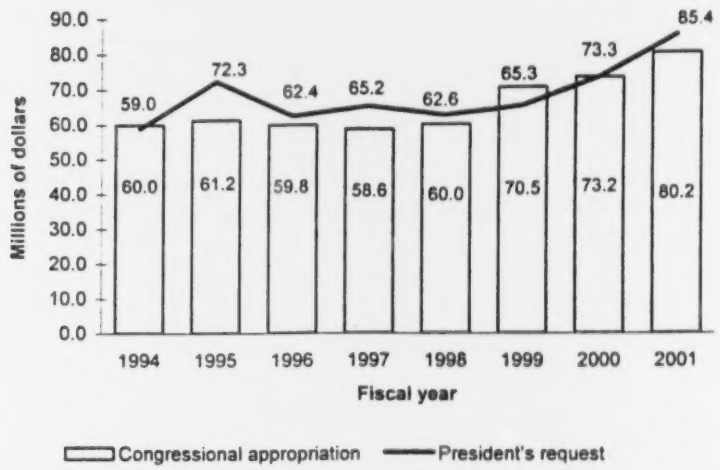
DOJ/CRD Funding History
(in millions of constant 1994 dollars)

Fiscal year	President's request	Congressional appropriation
1994	$59.0	$60.0
1995	72.3	61.2
1996	62.4	59.8
1997	65.2	58.6
1998	62.6	60.0
1999	65.3	70.5
2000	73.3	73.2
2001	85.4	80.2

NOTE: Estimates based on table 4.1.

FIGURE 4.1

DOJ/CRD Funding History
(in constant 1994 dollars)



NOTE: Estimates based on table 4.1.

Staffing and Workload

Between FY 1994 and FY 1999, staffing levels at the Civil Rights Division increased by 21 FTEs (see table 4.3). At the same time, the Division's enforcement responsibilities have expanded significantly. In FY 1996, the Division experienced a reduction in base level funding, which made it unfeasible "to provide funds for required payments such as pay raises and inflationary costs."[36] There was no change in staffing levels between FY 1995 and FY 1996 (see figure 4.2). In FY 1997, the number of CRD staff persons decreased by six. With an increase in funding in FY 1999, the Division increased its staff by 16 FTEs.

TABLE 4.3

CRD Staffing History

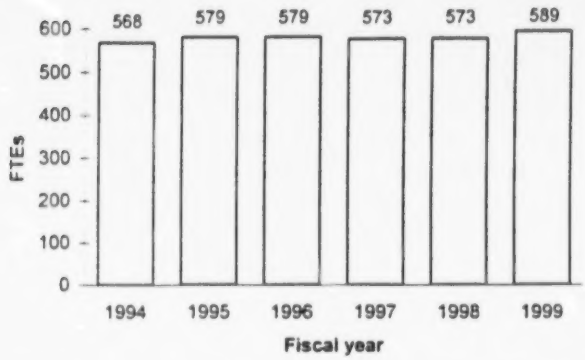
Fiscal year	FTE level
1994	568
1995	579
1996	579
1997	573
1998	573
1999	589

SOURCE: DOJ/CRD, Congressional Budget Submissions, Salaries and Expenses, FY 1994–2001. (For individual sections, also see Summary Resources by each program for these years.)

[36] U.S. Department of Justice, Civil Rights Division (DOJ/CRD), *Salaries and Expenses FY 1997*, p. 77 (hereafter cited as DOJ/CRD, FY 1997 Budget).

FIGURE 4.2

DOJ/CRD Staffing History



SOURCE: DOJ/CRD, Congressional Budget Submissions, Salaries and Expenses, FY 1994–2001. (For individual sections, also see Summary Resources by each program or these years.)

Disability Rights Enforcement

In 1990, the Americans with Disabilities Act significantly expanded the responsibilities of the Division, affecting workloads of the Appellate Section, the Educational Opportunities Section, the Employment Section, the Special Litigation Section, as well as the Disability Rights Section. In 1995, all disability-related coordination and enforcement responsibilities were transferred from the Coordination and Review Section into the newly established Disability Rights Section (DRS). The activities of the Disability Rights Section affect six million businesses and nonprofit organizations, more than 100 federal agencies, and more than 50 million people with disabilities.[37]

In FY 1992, the Coordination and Review Section, which handled disability-associated enforcement at that time, received 575 ADA complaints and initiated investigations in 301 of those.[38] Since then, the number of investigations initiated has increased (see table 4.5), yet remains low in proportion to the number of complaints received. In FY 1999, DRS received approximately 10,878 complaints and began only 928 investigations.[39]

Meanwhile, the number of pending cases increased between FY 1994 and FY 1995 (see table 4.5). Although staff levels for DRS rose during this period (see table 4.4), the National Council on Disability stated in June 2000 that the Disability Rights Section had "insufficient numbers of staff members to fully perform the section's responsibilities."[40] Between FY 1996 and FY 1998, DRS experienced no increase in staff levels (see table 4.4). By FY 1999, the Section was understaffed, and while facing increasing workloads, found it increasingly difficult to sustain a nationwide litigation program. Although the Disability Rights Section requested an increase of six FTEs for that year, it received only four additional FTEs.[41]

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[37] DOJ/CRD, *FY 2001 Congressional Budget Submission*, p. 54 (hereafter cited as DOJ/CRD, FY 2001 Budget).

[38] DOJ/CRD, *Salaries and Expenses FY 1994*, p. 19.

[39] DOJ/CRD, FY 2001 Budget, p. 96.

[40] National Council on Disability, *Promises To Keep: A Decade of Federal Enforcement of the Americans with Disabilities Act*, June 2000, p. 40.

[41] DOJ/CRD, *FY 1999 Congressional Budget Submission*, pp. 48–49.

According to the CRD FY 1999 budget submission, although the number of cases filed annually by the Disability Rights Section increased between FY 1994 and FY 1999, the Section still files too few cases in court.[42] According to CRD, litigation is resource intensive, yet it is "an essential tool for credible and efficient enforcement."[43] To effectively meet the needs of people with disabilities, the Disability Rights Section needs staffing and budget enhancements. Thus, the FY 2001 budget request seeks an additional 12 FTEs.[44]

TABLE 4.4

Disability Rights Section Staffing History

Fiscal year	FTE level
1994	48
1995	66
1996	69
1997	69
1998	69
1999	73

SOURCE: DOJ/CRD, Congressional Budget Submissions, Salaries and Expenses, FY 1994–2001. (For individual sections, also see Summary Resources by each program for these years.)

TABLE 4.5

Disability Rights Section Workload History

Fiscal year	Cases filed	Cases pending	Investigations initiated	Investigations pending
1994	–	–	692	892
1995	12	12	2,444	863
1996	29	12	999	2,888
1997	28	22	805	3,017
1998	28	50	922	2,707
1999	35	66	928	2,046

SOURCE: Performance Measurement Table: Presented by Decision Unit, Disability Rights Section 1997–2000. (Data for 1994 found in FY 1996 Budget Submission under Public Access Section.)

[42] Ibid., p. 134.

[43] DOJ/CRD, FY 2001 Budget, p. 54.

[44] Ibid., p. 56.

Coordination and Review

In August 1992, 40 FTEs were reprogrammed from the Coordination and Review Section (CORS), to establish the Public Access Section (now known as the Disability Rights Section), thus severely reducing the number of CORS staff.[45] In 1996, the Commission stated that CORS was "without the staff necessary to conduct an effective and comprehensive Title VI coordination and enforcement program."[46] Unfortunately, the number of CORS staff persons has continued to decline (see table 4.6). FTE levels for CORS decreased 40 percent between FY 1994 and FY 1999. As a result, the number of complaints per investigator has risen from 2 in FY 1995 to 31 in FY 1999.

TABLE 4.6

Coordination and Review Section Staffing History

Fiscal year	FTE level
1994	32
1995	21
1996	22
1997	21
1998	19
1999	19

SOURCE: DOJ/CRD, Congressional Budget Submissions, Salaries and Expenses, FY 1994–2001. (For individual sections, also see Summary Resources by each program for these years.)

Voting Rights Enforcement

Over the past decade, the enforcement duties of the Voting Rights Section have expanded. After the 1990 census, the workload for the Section increased. The Section received 5,445 redistricting submissions after the 1990 census, compared with only 2,931 such requests following the 1980 census.[47] The Section is still resolving conflicts over redistricting plans in the wake of the 1990 census,[48] and the Voting Rights Section predicts a dramatic increase in reviews of redistricting plans after the release of the 2000 census.[49] Past experience has illustrated that an influx of redistricting reviews is staff intensive and reduces the amount of voting rights litigation.[50]

The work of the Voting Rights Section continues to grow as a result of the Voting Rights Language Assistance Act of 1992,[51] which extended and expanded the Voting Rights Act to increase language minority coverage, and the National Voter Registration Act of 1993,[52] which improved access to voter registration. Supreme Court rulings in such cases as *Shaw v. Reno*[53] and *Miller v. Johnson*[54] have added to the Section's responsibilities by increasing the burden for showing that

[45] USCCR, 1995 Budget Report, p. 33.

[46] USCCR, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, p. 139.

[47] DOJ/CRD, *Salaries and Expenses FY 1992*, p. 20.

[48] Citizens' Commission on Civil Rights, *The Test of Our Progress*, 1999, p. 109.

[49] DOJ/CRD, FY 2001 Budget, p. 33.

[50] Ibid., p. 34.

[51] 42 U.S.C. §§ 1971 note, 1973aa-1a (1994 & Supp. IV 1998).

[52] 42 U.S.C. §§ 1973gg–10 (1994). The Voting Section is responsible for the Attorney General's civil enforcement of the Voting Rights Language Assistance Act under 42 U.S.C. § 1973gg-9(a) (1994).

[53] 509 U.S. 630 (1993).

[54] 515 U.S. 906 (1995).

there is a compelling justification for creating majority-minority districts under the Voting Rights Act.[55] Such decisions added to the Section's work as it became involved in defending the constitutionality of redistricting plans from several states.

Although defense of disputed majority-minority districts is an essential responsibility of the Voting Rights Section, it is equally essential for the Section to focus on cases under Section 2 of the Voting Rights Act.[56] Unfortunately, it is cost intensive for the Voting Rights Section to conduct such lawsuits.[57] In FY 1994, the Voting Rights Section filed a total of 27 cases, 5 of which were filed under Section 2.[58] By FY 1998, the Voting Rights Section filed only 4 cases, none of which were Section 2 cases.[59]

In the face of these overwhelming workload obstacles, the Voting Rights Section experienced a decrease in staffing between FY 1994 and FY 1999 (see table 4.7). The Voting Rights Section plays an essential role in protecting one of the foundations of our democracy—the right to vote. Therefore, CRD requested an increase of six FTEs for the Voting Rights Section for FY 2001.

TABLE 4.7

Voting Rights Section Staffing History

Fiscal year	FTE level
1994	88
1995	86
1996	86
1997	86
1998	85
1999	86

SOURCE: DOJ/CRD, Congressional Budget Submissions, Salaries and Expenses, FY 1994–2001. (For individual sections, also see Summary Resources by each program for these years.)

Civil Rights Prosecution

CRD's work relating to the prosecution of civil rights violations was enlarged in 1991 with the passage of the Hate Crimes Statistics Act,[60] which has heightened attention to the incidence of hate crimes under its reporting provisions. The Division also was given responsibility for prosecuting cases under the Freedom of Access to Clinic Entrances Act of 1994.[61] CRD's duties were further increased as a result of the Church Arson Prevention Act of 1996, which has resulted in a number of prosecutions for arson and desecration. As a result of these new laws, the workload of the Civil Rights Prosecution Section has increased substantially since FY 1994 (see table 4.9). The Section received 45 percent more complaints in FY 1999 than it did in FY 1994.

In addition, civil rights prosecutions involving official misconduct by law enforcement officers have risen since FY 1994. In FY 1998, the Civil Rights Prosecution Section charged a record number of law enforcement officers with criminal civil rights violations. Although the Section filed 10 more

[55] Citizens' Commission on Civil Rights, *The Test of Our Progress*, pp. 109–10.

[56] Ibid., p. 111.

[57] 2000 DOJ Oversight Hearing, p. 121.

[58] DOJ/CRD, FY 1997 Budget, p. 44.

[59] DOJ/CRD, FY 2000 Budget, p. 82.

[60] Pub. L. No. 101-275, 104 Stat. 140 (codified at 28 U.S.C. § 534 note (1994 & Supp. IV 1998)).

[61] 18 U.S.C. § 248 (1994).

cases in FY 1999 than in the previous year, fewer enforcement officers were charged as defendants. This is a result of inadequate resources available for official misconduct cases, essentially all of which "require extensive and time consuming investigative efforts on the part of both lawyers and investigators."[62]

Between FY 1994 and FY 1997, the number of FTEs in the Civil Rights Prosecution Section remained relatively stable (see table 4.8). The Section experienced no increase in staffing until FY 1998. Meanwhile, between FY 1994 and FY 1998, the Section's number of pending matters increased by 35 percent (see table 4.9). The CRD budget request included an increase of 10 FTEs for the Civil Rights Prosecution Section in FY 2000 and an increase of 4 FTEs in FY 2001.[63]

TABLE 4.8

Civil Rights Prosecution Section Staffing History

Fiscal year	FTE level
1994	49
1995	47
1996	47
1997	47
1998	54
1999	61

SOURCE: DOJ/CRD, Congressional Budget Submissions, Salaries and Expenses, FY 1994–2001. (For individual sections, also see Summary Resources by each program for these years.)

TABLE 4.9

Civil Rights Prosecution Section Workload History

Fiscal year	Complaints received	Matters investigated	Pending matters
1994	8,342	2,633	1,936
1995	8,864	2,370	1,806
1996	11,721	2,619	2,227
1997	10,891	2,753	2,613
1998	12,188	2,955	2,617
1999	12,132	2,547	2,680

SOURCE: Performance Measurement Table: Presented by Decision Unit, Civil Rights Prosecution Section, 1994–2000.

Fair Housing Enforcement

Another substantial increase in CRD's enforcement responsibilities occurred with passage of the Fair Housing Amendments Act of 1988.[64] This act created a new administrative enforcement

[62] DOJ/CRD, FY 2001 Budget, pp. 21–22.

[63] DOJ/CRD, FY 2000 Budget, p. 16; DOJ/CRD, FY 2001 Budget, p. 20.

[64] 42 U.S.C. §§ 3601–3619, 3631 (1994 & Supp. IV 1998).

mechanism, which requires CRD to initiate litigation in two situations: (1) when a party to a HUD complaint elects to have the case tried in federal court as opposed to the HUD administrative process; and (2) to seek prompt judicial relief when necessary while HUD completes its investigation and disposition of a complaint.[65] In 1995, the Commission stated that "these changes to the Fair Housing Act have increased both the number and complexity of cases in litigation . . . thus reducing the [CRD's] capacity to bring traditional pattern and practice cases."[66]

In 1992, two new initiatives under the Fair Housing Amendments Act were announced. The first provided for the creation and implementation of a new fair housing testing program. The second initiative directed CRD to take the lead in the investigation of discrimination in home mortgage loans.[67] Those initiatives significantly increased the number of pattern and practice suits filed by the Section. For example, the Housing Section filed 63 percent more HUD election cases in FY 1994 than it had in FY 1993.[68] Even though election cases had substantially increased, pattern and practice cases also have increased as a result of the Fair Housing Amendments Act.

However, since 1994, the number of election case filings has significantly dropped year by year. In FY 1997, the Housing Section filed only 23 election cases. Still, in the same year the Section filed only 14 pattern and practice cases.[69] Even though the Housing Section filed 85 percent more election cases in FY 1994 than in FY 1997, the number of pattern and practice cases filed in FY 1997 was 25 cases below the FY 1994 figure. In FY 1999, the number of pattern and practice cases that the Housing Section filed increased slightly to 19, but was still dramatically below the FY 1994 figure. Meanwhile, the Section filed only 24 election cases in FY 1999.[70] Because of their broad impact, pattern and practice cases are "the highest priority of the Section and most important that it brings."[71]

At a time when its nondiscretionary caseload is decreasing, the Housing Section should be able to increase its discretionary caseload. Yet, the Housing Section's staff level has hindered its ability to conduct discretionary cases even with a decreased workload.[72] In fact, between FY 1995 and FY 1999, FTE levels at the Housing Section decreased significantly from 96 FTEs to 77 FTEs, a 19.7 percent reduction.

TABLE 4.10

Housing Section Staffing History

Fiscal year	FTE level
1994	89
1995	96
1996	95
1997	93
1998	86
1999	77

SOURCE: DOJ/CRD, Congressional Budget Submissions, Salaries and Expenses, FY 1994–2001. (For individual sections, also see Summary Resources by each program for these years.)

[65] USCCR, 1995 Budget Report, p. 30.

[66] Ibid., p. 31.

[67] Ibid., p. 32.

[68] DOJ/CRD, FY 1997 Budget, p. 56.

[69] DOJ/CRD, FY 2000 Budget, p. 94.

[70] DOJ/CRD, FY 2001 Budget, p. 88.

[71] Ibid., p. 46.

[72] Citizens' Commission on Civil Rights, *The Test of Our Progress*, p. 238.

Summary

The Civil Rights Division is requesting an FTE level of 730 for FY 2001. This is an increase of 141 FTEs over the FY 1999 staff level.[73] With expanded responsibilities and increased workloads, CRD is in need of these requested staffing enhancements if it is to fulfill its crucial role of enforcing, in a fair and uniform way, the nation's civil rights laws, as well as meeting the Division's mandate to proactively fight discrimination through pattern and practice suits.

[73] DOJ/CRD, FY 2001 Budget, p. 7.

CHAPTER 5

Office for Civil Rights, U.S. Department of Health and Human Services

On March 12, 1953, President Eisenhower transmitted to the Congress Reorganization Plan No. 1, creating the Department of Health, Education, and Welfare (HEW).[1] In 1979, enactment of the Department of Education Organization Act[2] divested HEW of most functions relating to education, including civil rights enforcement authority. Congress renamed HEW the Department of Health and Human Services (HHS), leaving with it the enforcement of antidiscrimination provisions applicable to all programs and activities relating to health and human services. The Office for Civil Rights (OCR) administers numerous statutes that prohibit discrimination by providers of health care and social services.

ENFORCEMENT AUTHORITY

OCR enforces Title VI of the Civil Rights Act of 1964,[3] Title IX of the Education Amendments of 1972,[4] Section 504 of the Rehabilitation Act of 1973,[5] and the Age Discrimination Act of 1975.[6] Together, these laws prohibit discrimination by recipients of federal financial assistance based on race, color, national origin, sex, age, and disability. In 1978, Congress extended Section 504 to programs and activities conducted by the United States government itself.[7] Further expansion of OCR's enforcement responsibility with respect to the protection of persons with disabilities occurred in 1990 with passage of the Americans with Disabilities Act (ADA).[8] Under the implementing regulations for Title II of the ADA, HHS is to ensure compliance in the following areas:

> All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health related schools, the operation of health care and social service providers and institutions, including "grass roots" and community services organizations and programs, and preschool and daycare programs.[9]

OCR also has enforcement authority under the Public Health Service Act, which prohibits discrimination on the basis of sex in admission to health-related training programs funded under the

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[1] 18 Fed. Reg. 2053 (1953).

[2] 20 U.S.C. §§ 3401 *et seq.* (1994).

[3] 42 U.S.C. §§ 2000d–2000d-7 (1994 & Supp. IV 1998).

[4] 20 U.S.C. §§ 1681–1688 (1994).

[5] 29 U.S.C. § 794 (1994).

[6] 42 U.S.C. §§ 6101–6107 (1994 & Supp. IV 1998).

[7] Pub. L. No. 95-602, Title I, § 119, 92 Stat. 2955 (codified at 29 U.S.C. § 794 (1994)).

[8] 42 U.S.C. §§ 12131–12213 (1994).

[9] 28 C.F.R. § 35.190(b)(2) (2000).

act,[10] and requires facilities assisted by the Hill-Burton Act to provide health care services to all persons residing in the service area in a nondiscriminatory manner.[11] OCR also enforces provisions of the Omnibus Reconciliation Act of 1981,[12] which requires nondiscrimination on the basis of race, color, national origin, disability, age, sex, and/or religion in health care and other block grant programs. In addition, two initiatives dealing with minority health disparities based on ethnicity are the responsibility of HHS as a result of an executive order in June 1999.[13]

OCR estimates that approximately 230,000 group and institutional providers of federally assisted services are subject to the nondiscrimination laws it enforces. Recipients of HHS funds include hospitals, extended care facilities, mental health centers, alcohol and drug treatment programs, family and children programs (including Head Start), public assistance agencies, adoption and foster care programs, and senior citizens programs.[14]

Enforcement Procedures

OCR's enforcement activities include investigating complaints, conducting compliance reviews, monitoring corrective action plans, and conducting voluntary compliance and outreach activities. OCR attempts to resolve all instances of noncompliance through the negotiation of voluntary agreements. However, if the matter involving noncompliance cannot be resolved voluntarily to the satisfaction of all parties, OCR may suspend or terminate federal financial assistance.[15] OCR also may refer cases to the Attorney General for enforcement proceedings, pursue HHS administrative enforcement proceedings, or invoke "any applicable proceeding under State or local law."[16]

Budget Analysis

Budgets

In actual dollars, OCR's budget has remained relatively stable since FY 1994. However, in terms of real spending power, both the budget requests and appropriations for OCR have fallen during the past six fiscal years (see figure 5.1). From FY 1996 to FY 2000, the budget requests for the Office for Civil Rights, in actual dollars, have consistently remained lower than the FY 1994 request (see table 5.1). Correspondingly, the real spending power of the FY 2000 budget request for OCR was almost 11 percent below the FY 1994 figure (see table 5.2). In addition, Congressional appropriations from FY 1995 to FY 1999 have been consistently lower in actual dollars than the FY 1994 appropriation (see table 5.1).

When looking at the past two decades and accounting for inflation, the FY 2000 budget is over 60 percent below the real spending power of the FY 1981 budget.[17] The Commission noted in 1999:

> OCR operates under severe budgetary constraints. . . . OCR's responsibilities and workload have increased over the past several years, yet its funding and staffing have decreased. OCR's budget had fluctuated around $20 million since 1981, and has not kept up with inflation.[18]

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[10] 42 U.S.C. §§ 295m, 298b-2 (1994).

[11] 42 U.S.C. § 291c(e) (1994).

[12] Pub. L. No. 97-35, 95 Stat. 357 (1981).

[13] Exec. Order No. 13,125, 64 Fed. Reg. 3,1105 (June 7, 1999).

[14] U.S. Department of Health and Human Services, Office for Civil Rights (HHS/OCR), *Fiscal Year 2000 Budget Request*, p. 13 (hereafter cited as HHS/OCR, FY 2000 Budget Request).

[15] 45 C.F.R. § 80.8(a) (2000).

[16] *Id.*

[17] USCCR, *The Health Care Challenge: Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality*, September 1999, p. 42.

[18] Ibid., pp. 41–42.

The Commission further stated:

> That civil rights enforcement is such a small part of the overall HHS budget highlights its low priority in the agency. Without proper enforcement of civil rights staututes and regulations, programs cannot operate effectively, as evidenced by the historical record of HHS. As a result, the health status of the nation as a whole is endangered.[19]

The Commission's 1999 report noted that OCR's limited budget placed severe constraints on the agency's ability to conduct integral civil rights enforcement strategies, such as on-site complaint investigations, compliance reviews, and local community outreach and education.[20]

In both FY 1996 and FY 1997, Congressional appropriations were below the funding levels necessary to cover OCR's basic salaries and benefits. As a result of these inadequate funding levels, the Secretary of HHS, under her one percent transfer authority, transferred money from other HHS appropriated funds to cover OCR's basic needs. In June 1999, the Supreme Court decision in *Olmstead v. L.C.*[21] added to the responsibilities of OCR, yet this increase in duties occurred after the FY 2000 budget was submitted to the Congress. The Secretary authorized a net transfer of $495,000 to OCR in order to support this expansion in disability programmatic activity.

TABLE 5.1

HHS/OCR Funding History
(in actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	$22,182,000	$22,181,000
1995	22,390,000	21,891,000
1996	21,160,000	19,380,000*
1997	21,790,000	19,490,000**
1998	20,530,000	19,659,000
1999	20,659,000	20,618,000
2000	22,159,000	22,088,000***
2001	27,000,000	28,000,000

*$330,000 transfer added on the Secretary's authority after this appropriation.
**$475,000 transfer added on the Secretary's authority after this appropriation.
***$495,000 net transfer added on Secretary's authority after this appropriation.

SOURCE: HHS/OCR, "Appropriations History Table," accessed at <http://www.hhs.gov/ocr/ocr2001-0.html>; HHS/OCR, "Amounts Available for Obligation," p. 2, accessed at <http://www.dhhs.gov/ocr/ocr2000-3.html.> Executive Office of the President, Office of Management and Budget, fax, Dec. 21, 2000.

[19] Ibid., p. 44. The report also noted that the OCR budget accounted for 0.0054 percent of the entire HHS budget. Ibid.

[20] Ibid., pp. 292–94.

[21] 527 U.S. 581 (1999).

TABLE 5.2

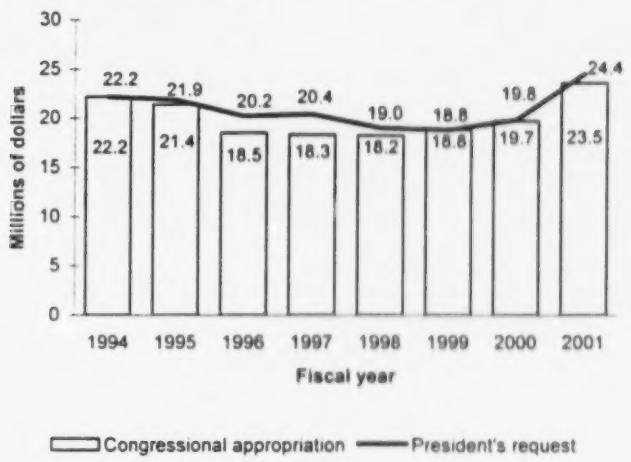
HHS/OCR Funding History
(in millions of constant 1994 dollars)

Fiscal year	President's request	Congressional appropriation
1994	$22.2	$22.2
1995	21.9	21.4
1996	20.2	18.5
1997	20.4	18.3
1998	19.0	18.2
1999	18.8	18.8
2000	19.8	19.7
2001	23.5	24.4

NOTE: Estimates based on data in table 5.1.

FIGURE 5.1

HHS Funding History
(in constant 1994 dollars)



NOTE: Estimates based on data in table 5.1.

Staffing and Workload

The pattern of funding for OCR has severely reduced the agency's staffing levels (see table 5.3). The number of FTEs decreased by 26 percent between FY 1994 and FY 1999 (see figure 5.2). Further, the FY 2001 FTE request is 12 percent below the actual staff level for FY 1994.

Since FY 1994, the number of staff assigned to conduct compliance reviews has fluctuated, but decreased overall.[22] Between FY 1994 and FY 1995, the compliance review staff was reduced from 74 to 54 FTEs. In FY 1997, 89 FTEs were assigned to conduct compliance reviews, but by FY 1999 the number of staff performing compliance reviews was only 71.[23]

[22] HHS/OCR, data sheets provided to USCCR, August 2000.

[23] Ibid.

Meanwhile, OCR must periodically conduct post-grant reviews that appraise the policies and practices of program recipients to evaluate compliance. In addition, OCR must investigate a review, report, or complaint with information that suggests noncompliance with antidiscrimination requirements. Post-grant reviews and investigations are "more effective prevention efforts than can be accomplished through handling of issues raised by complainants alone."[24] However, as funding and staffing have decreased since FY 1994, the number of post-grant reviews and investigations conducted has increased (see table 5.4). The pending inventories of reviews and investigations have increased nearly threefold during this period, and, as a result, the total workload of post-grant reviews and investigations has increased by 76 percent (see table 5.4).

The number of complaints that OCR received peaked in FY 1992 shortly after OCR implemented responsibilities resulting from the Americans with Disabilities Act. Complaints received by OCR decreased between FY 1994 and FY 1998, from 2,222 to 1,548 (see table 5.6). Although this is a 30 percent decrease in incoming workload, reductions in staff have not been proportional. The number of staff responsible for complaint processing decreased 48 percent between FY 1994 and FY 1998 (see table 5.5).

In FY 1999, the number of complaints received by OCR significantly increased to 1,950, which is a 26 percent increase over the number of complaints received in FY 1998 (see table 5.6), yet the FTE level increased by only five FTEs (see table 5.5). In addition, OCR projects a continued steady rise in the number of complaints received for both FY 2000 and FY 2001. Thus, the FY 2001 budget request includes 95 FTEs to handle complaint processing, a figure that is still 33 percent below the FTE level in FY 1994.

TABLE 5.3

HHS/OCR Staffing History

Fiscal year	Requested staffing level	Actual staffing level
1994	297	284
1995	297	259
1996	276	242
1997	274	232
1998	242	216
1999	232	210
2000	225	–
2001	249	–

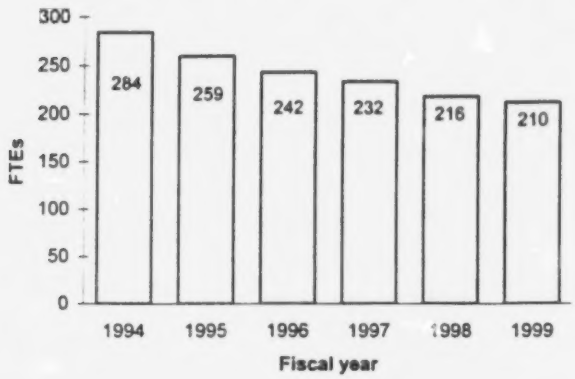
NOTE: Information for FY 2001 FTEs provided by OMB. This number reflects the supplemental budget from June 2000. OMB interview, attachment, p. 38.

SOURCE: HHS/OCR, fax to USCCR, Aug. 31, 2000, p. 2.

[24] HHS/OCR, FY 2000 Budget Request, p. 29.

FIGURE 5.2

HHS Staffing History



SOURCE: HHS/OCR, fax USCCR, Aug. 31, 2000, p. 2.

TABLE 5.4

HHS/OCR Post-Grant Review and Investigations' Workload History

Fiscal year	New starts	Total workload	Pending inventory
1994	203	256	46
1995	122	168	36
1996	181	217	60
1997	328	388	90
1998	301	391	164
1999	287	451	181

SOURCE: HHS/OCR, "HHS Office for Civil Rights Workload FY 1994 through FY 2001," fax to USCCR, Aug. 30, 2000.

TABLE 5.5

HHS/OCR Complaint Processing Staff History

Fiscal year	Staffing level
1994	141
1995	145
1996	129
1997	84
1998	74
1999	79
2000	77*
2001	95*

*estimate

SOURCE: HHS/OCR, fax to USCCR, Aug. 31, 2000, p. 2.

TABLE 5.6

HHS/OCR Complaint Workload History

Fiscal year	Complaints received
1994	2,222
1995	2,094
1996	1,827
1997	1,741
1998	1,548
1999	1,950
2000	2,063*
2001	2,172*

*estimate

SOURCE: HHS/OCR, "HHS Office for Civil Rights Workload FY 1994 through FY 2001," fax to USCCR, Aug. 30, 2000.

Summary

In 1995, the Commission noted that OCR's budget had decreased 34 percent in real terms from FY 1981 to FY 1995.[25] This unfortunate trend has continued through to the present day. The requested staff level for FY 2001 is 20 percent below the requested FTE level in FY 1994. For the first time in six years, the FY 2001 request, in actual dollars, is above the FY 1994 request.

[25] USCCR, 1995 Budget Report, p. 15.

CHAPTER 6

Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development (HUD) was established in 1965.[1] From its beginning, equal opportunity in housing has been one of the agency's primary functions. Under the direction of the Assistant Secretary for Equal Opportunity, the Office of Fair Housing and Equal Opportunity (FHEO) exercises a broad range of authority in matters relating to fair housing.

ENFORCEMENT AUTHORITY

Several laws and executive orders extend fair housing enforcement powers to FHEO. These are:

- President Kennedy's Executive Order 11063 relating to equal opportunity in federally financed housing;[2]
- Title VI of the Civil Rights Act of 1964;[3]
- Title VIII of the Civil Rights Act of 1968;[4]
- Section 3 of the Housing and Urban Development Act of 1968;[5]
- Section 504 of the Rehabilitation Act of 1973;[6]
- Section 109 of Title I of the Housing and Community Development Act of 1974;[7]
- the Age Discrimination Act of 1975;[8]
- the Housing and Community Development Act of 1987;[9]
- the Fair Housing Amendments Act of 1988;[10]
- Title II of the Americans with Disabilities Act of 1990;[11] and
- President Clinton's Executive Order 12892 that requires HUD to coordinate certain fair housing efforts.[12]

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[1] Department of Housing and Urban Development Act, Pub. L. No. 89-174, 79 Stat. 667 (codified at 42 U.S.C. §§ 3531–3541 (1994 & Supp. IV 1998)).

[2] Exec. Order No. 11,063, 27 Fed. Reg. 11527 (Nov. 20, 1963), 3 C.F.R § 339 (959-1963), *amended by* Exec. Order 12,259, 3 C.F.R. § 339 (1980) (*reprinted in* 42 U.S.C. § 3608 (1994 & Supp. IV 1998)).

[3] 42 U.S.C. §§ 2000d–2000d-7 (1994 & Supp. IV 1998).

[4] 42 U.S.C. §§ 3601–3619 (1994 & Supp. IV 1998).

[5] Pub. L. No. 90-448, 82 Stat. 476 (codified at 12 U.S.C. § 1701u (1994)).

[6] 29 U.S.C. § 794 (1994).

[7] Pub. L. No. 93-383, 88 Stat. 633 (codified at 42 U.S.C. § 5309 (1994)).

[8] 42 U.S.C. §§ 6101–6107 (1994 & Supp. IV 1998).

[9] Pub. L. No. 100-242, 101 Stat. 1815 (1994).

[10] 42 U.S.C. §§ 3601–3619, 3631 (1994 & Supp. IV 1998).

[11] 42 U.S.C. §§ 12131–12165 (1994).

[12] Exec. Order No. 12,892, 59 Fed. Reg. 2939 (Jan. 17, 1994).

The majority of FHEO's civil rights responsibilities lie in its authority to enforce Title VIII of the Civil Rights Act of 1968. Originally the law prohibited discrimination on the basis of race, color, religion, or national origin in the sale or rental, provision of brokerage services, or financing of housing, and placed the responsibility and authority for administering the act with the Secretary of HUD. In 1974, the Housing and Community Development Act of 1974 added sex as a jurisdictional basis to the Fair Housing Act.[13]

Prior to 1988, FHEO had limited authority to enforce the fair housing requirements; it could not bring any kind of enforcement action. The agency was authorized to investigate complaints alleging discriminatory housing practices and to seek voluntary compliance through informal methods, such as conciliation.[14] If such efforts were unsuccessful, FHEO would notify the complainant, who could then file a civil action in any state or federal court. However, the Fair Housing Amendments Act of 1988 dramatically expanded the enforcement responsibilities of FHEO. The amendments increased the coverage of Title VIII to include the prohibition of discrimination on the basis of disability and familial status and authorized FHEO to use administrative and judicial proceedings as means of enforcement.[15]

Pursuant to statutory authority and presidential executive orders, FHEO also has the responsibility to ensure nondiscrimination without regard to race, color, religion, sex, disability, familial status, national origin, and age in programs and activities that receive federal financial assistance.[16] Currently, there are more than 35 statutory programs or activities to which HUD's Title VI, Section 504, and Section 109 regulations apply.[17] The Civil Rights Restoration Act of 1987 expanded the reach of the office's authority regarding equal opportunity in federally assisted programs and activities relating to housing and urban development.

HUD is the designated agency for the enforcement of certain aspects of Title II of the Americans with Disabilities Act, which requires all units of state and local government to make their services and programs available without regard to an individual's disability. HUD's Title II responsibilities cover all "programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral."[18]

FHEO also is responsible for the enforcement of Section 3 of the Housing and Urban Development Act of 1968,[19] which seeks to provide employment and other economic opportunities for the low-income residents and business concerns in the area in which HUD-financed projects are being planned or constructed. In 1992, Congress substantially amended Section 3, including the extension of coverage to "very low-income persons."[20] The provision applies broadly to all HUD "housing and community development programs" that receive federal financial assistance.[21]

Finally, FHEO prepares rules and regulations to govern the enforcement of nondiscrimination requirements relating to housing and urban development, and performs coordination functions in the area of equal opportunity in housing and urban development. In January 1994, President Clinton issued Executive Order 12892,[22] which expanded HUD's directive to coordinate enforcement efforts

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[13] 42 U.S.C. § 5309(a) (1994).

[14] USCCR, *Funding Federal Civil Rights Enforcement*, June 1995, p. 48 (hereafter cited as USCCR, 1995 Budget Report).

[15] The Fair Housing Amendments became effective on Mar. 12, 1989.

[16] *See, e.g.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d–2000d-7 (1994 & Supp. IV 1998); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1994); Section 109 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 (1994); and the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101–6107 (1994 & Supp. IV 1998). *See also* Exec. Order No. 11,063, 27 Fed. Reg. 11527 (Nov. 20, 1963), 3 C.F.R. § 339 (959-1963) (*amended by* Exec. Order No. 12,259, 3 C.F.R. § 339 (1980) (*reprinted in* 42 U.S.C. § 3608 (1988)).

[17] USCCR, 1995 Budget Report, p. 48.

[18] 28 C.F.R. § 35.190(b)(4) (2000).

[19] 12 U.S.C. § 1701u(b) (1994).

[20] *Id.* § 1701u(b).

[21] *Id.*

[22] Exec. Order No. 12,892, 59 Fed. Reg. 2939 (Jan. 17, 1994).

among federal agencies administering programs or activities relating to housing and urban development.

Enforcement Procedures

FHEO investigates complaints received by persons alleging discriminatory practices relating to housing. Title VIII complaints that fall within the jurisdiction of state or local agencies are referred to those agencies for initial processing. During the investigatory period, FHEO engages in conciliation and, at the end of the investigation, issues a determination indicating whether reasonable cause exists to believe that discrimination has occurred. If reasonable cause is found, any of the parties may elect to have the matter resolved in federal court through a HUD referral to the U.S. Department of Justice, Civil Rights Division. If no party opts for a judicial determination, the charge is resolved through the HUD administrative process, which could result in awarding actual damages, equitable relief, a civil penalty, costs, and attorney fees.[23]

FHEO also conducts investigations and compliance reviews to enforce the provisions of Title VI, Section 504, the Age Discrimination Act of 1975, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, the Americans with Disabilities Act, and Executive Order 11063. If a violation is found, HUD may refuse to approve an application for financial assistance, or if the proceedings involve a current recipient, HUD may terminate funding or take other appropriate measures.

FHIP and FHAP

FHEO also administers two funding assistance programs: the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP). FHAP provides financial assistance to supplement the enforcement activities of state and local enforcement agencies that have been certified as providing rights, remedies, procedures, and the availability of judicial review that are substantially equivalent to that provided in the Fair Housing Act.[24] FHEO makes determinations as to whether state and local agencies are substantially equivalent, which often involves on-site reviews.

FHIP was authorized by the Housing and Community Development Act of 1987,[25] which provided for the execution of grants, contracts, or cooperative agreements with state or local government agencies, public or private nonprofit organizations, institutions, or other entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices.[26] Initiative funding is provided in four distinct areas: administrative enforcement, education and outreach, private enforcement, and fair housing organization.[27] The Housing and Community Development Act of 1992[28] expanded the provisions of FHIP, adding initiatives to (1) establish fair housing organizations in unserved and underserved areas and build the capacity of existing fair housing organizations; (2) establish a national media campaign for dissemination of fair housing information; and (3) create an annual National Fair Housing Month program component within FHIP.

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[23] *See* 42 U.S.C. §§ 3601–3612 (1994 & Supp. IV 1998).

[24] Agencies receive capacity building funds in their first and second years of participation in the program. After the second year, they become "continuous agencies" and are eligible to receive case processing and administrative cost assistance. *See* 24 C.F.R. §§ 111.101–111.123 (2000).

[25] 42 U.S.C. § 3616a (1994 & Supp. IV 1998).

[26] This authorizing legislation was enacted in February 1988, and funds were first appropriated in the FY 1989 Appropriations Act.

[27] *See* 24 C.F.R. §§ 125.201–125.403 (2000).

[28] Pub. L. No. 102-550, § 905b, 106 Stat. 3672 (codified at 42 U.S.C. §3616a (1994 & Supp. IV 1998)).

BUDGET ANALYSIS

Since FY 1994, budget requests and appropriations for FHEO have declined, in both actual and real terms (see tables 6.1 and 6.2). Full-time-equivalent positions also have been reduced in number. Between FY 1994 and FY 2000, the number of FHEO staff decreased by 22 percent (see table 6.3). Although there were 23 additional FTEs in FY 1998, the decline over the past seven years has been consistent.

Budgets

Overall requested funding for FHEO fell in actual dollars between FY 1994 and FY 2000 (see table 6.1). In terms of real spending power, the amount of funding requested by the President for FHEO has decreased 11 percent during this period (see table 6.2). Since FY 1994, Congressional appropriations also have decreased.

Between FY 1995 and FY 1998, a series of program adjustments and buyouts adversely affected funding levels for FHEO.[29] As a result, during this period FHEO's budget fell by nearly $4.6 million in actual dollars and $6.7 million in real dollars (see tables 6.1 and 6.2). In FY 1999, the requested and appropriated budget for FHEO increased somewhat, compared with the previous year (see figure 6.1). However, the FY 2000 appropriation was lower than the FY 1999 appropriation in both actual and real terms.

TABLE 6.1

HUD/FHEO Funding History
(in actual dollars)

Fiscal year	President's request	Congressional appropriation
1994	$51,080,000	$49,380,000
1995	52,228,000	50,081,000
1996	48,790,000	45,500,000
1997	49,496,000	46,258,000
1998	48,695,000	45,510,000
1999	49,887,000	47,555,000
2000	50,776,000	47,455,000

NOTE: FHEO's request is a part of an overall salaries and expenses request for HUD. HUD receives a lump sum appropriation, of which FHEO receives an allotment for salaries and expenses. Therefore, the data presented in this table are estimates based on historical data. Such estimates are not available for FY 2001.

SOURCE: FHEO, fax to USCCR, Aug. 31, 2000, p. 2.

[29] U.S. Department of Housing and Urban Development, fax to USCCR, August 2000, p. 2.

TABLE 6.2

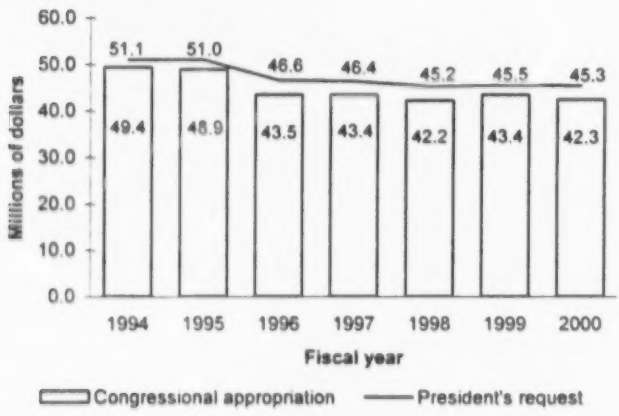
HUD/FHEO Funding History
(in millions of constant 1994 dollars)

Fiscal year	President's request	Congressional appropriation
1994	$51.1	$49.4
1995	51.0	48.9
1996	46.6	43.5
1997	46.4	43.4
1998	45.2	42.2
1999	45.5	43.4
2000	45.3	42.3

NOTE: Estimates based on data in table 6.1.

FIGURE 6.1

HUD/FHEO Funding History
(in constant 1994 dollars)



NOTE: Estimates based on data in table 6.1.

Staffing and Workload

FHEO's FY 1995 budget proposed a 20 percent decrease in staffing as a result of a reduced need for temporary employees to conduct Title VIII investigations. A reorganization of FHEO that year was designed to enable the office to be more effective in implementing fair housing policies and enforcing the law.[30] However, for FY 1996, FHEO requested an increase of eight FTEs as a result of an increase in the number of temporary employees needed for Title VIII investigations.[31] The FY 2000 FTE level remains well below that of FY 1994 (see table 6.3).

[30] U.S. Department of Housing and Urban Development, *Congressional Justifications for 1995 Estimates*, part 2, March 1994, p. Q-6.

[31] U.S. Department of Housing and Urban Development, *Congressional Justifications for 1996 Estimates*, part 2, March 1995, p. U-7.

TABLE 6.3

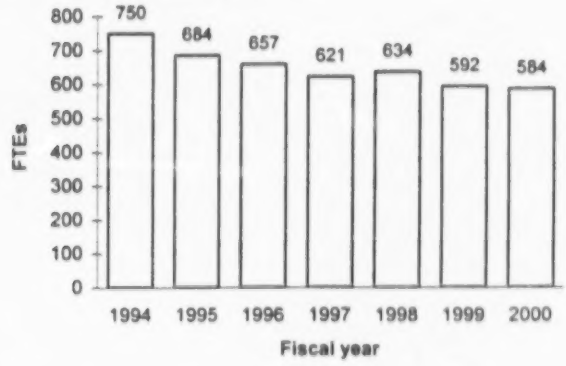
HUD/FHEO Staffing History

Fiscal year	FTE level
1994	750
1995	684
1996	657
1997	621
1998	634
1999	592
2000	584

SOURCE: FHEO, fax to USCCR, Aug. 31, 2000, p. 2.

FIGURE 6.2

HUD/FHEO Staffing History



SOURCE: FHEO, fax to USCCR, Aug. 31, 2000, p. 2.

As staff levels decreased between FY 1994 and FY 1999, the number of Title VIII complaints received by FHEO rose by 14 percent (see table 6.4). During this same period, the number of FTEs declined by 21 percent, from 750 in FY 1994 to 592 in FY 1999 (see figure 6.2). FHEO estimated that Title VIII complaints would continue to increase slightly in FY 2000 and FY 2001.[32] Since FY 1994, FHEO has received an average of 10,000 Title VIII complaints annually. Throughout the 1980s, FHEO received an average of only 5,000 Title VIII complaints per year.

[32] Executive Office of the President, Office of Management and Budget, fax to USCCR, Aug. 3, 2000, p. 2 (hereafter cited as OMB, August 3 data sheet).

TABLE 6.4

HUD/FHEO Title VIII Complaint History

Fiscal year	Complaints received
1994	9,524
1995	8,187
1996	10,945
1997	10,227
1998	10,266
1999	10,836
2000*	11,000
2001*	11,000

*estimate

SOURCE: HUD, *Congressional Justifications for 1996 Estimates*, pt. 2, March 1995, p. U-1; HUD, *Congressional Justifications for 1997 Estimates*, pt. 2, April 1996, p. N-1; HUD, *Congressional Justifications for 1998 Estimates*, pt. 2, February 1997, p. N-1; HUD, *Congressional Justifications for 1999 Estimates*, pt. 2, February 1998, p. M-1; HUD, *Congressional Justifications for 2000 Estimates*, pt. 2, February 1999, p. N-1; Executive Office of the President, Office of Management and Budget, fax to USCCR, Aug. 3, 2000, p. 2 .

As the number of Title VIII complaints continues to increase, complaints under other statutes have decreased overall. Section 504 complaints slightly decreased between FY 1994 and FY 2000, from 285 to 236 (see table 6.5). As well, Title VI and Section 109 complaints are below what they were in FY 1994. In FY 2000, 64 complaints received by FHEO were filed under the ADA. Although this figure is below the 150 ADA complaints received in FY 1997, it still represents a 52 percent increase over the FY 1994 figure.

TABLE 6.5

HUD/FHEO Program Compliance Complaints

Fiscal year	Title VI	Section 109	Section 504	ADA	Total
1994	228	48	285	42	603
1995	193	38	380	17	628
1996	143	103	218	107	571
1997	175	175	250	150	700
1998	74	67	206	62	409
1999	144	21	225	64	454
2000*	151	21	236	64	472
2001*	159	22	248	67	496

*estimate

SOURCE: HUD, *Congressional Justifications for 1996 Estimates*, pt. 2, March 1995, p. U-1; HUD, *Congressional Justifications for 1997 Estimates*, pt. 2, April 1996, p. N-1; HUD, *Congressional Justifications for 1998 Estimates*, pt. 2, February 1997, p. N-1; HUD, *Congressional Justifications for 1999 Estimates*, pt. 2, February 1998, p. M-1; HUD, *Congressional Justifications for 2000 Estimates*, pt. 2, February 1999, p. N-1; Executive Office of the President, Office of Management and Budget, fax to USCCR, Aug. 3, 2000, p. 2.

TABLE 6.6

HUD/FHEO Program Compliance Reviews

Fiscal year	Title VI	Section 109	Section 504	ADA	Total
1994	21	2	34	0	57
1995	12	2	155	0	169
1996	51	6	121	10	188
1997	100	30	150	40	320
1998	100	30	150	40	320
1999	39	3	38	32	112
2000*	41	4	40	34	119
2001*	43	5	42	36	126

*estimate

SOURCE: HUD, *Congressional Justifications for 1996 Estimates*, pt. 2, March 1995, p. U-1; HUD, *Congressional Justifications for 1997 Estimates*, pt. 2, April 1996, p. N-1; HUD, *Congressional Justifications for 1998 Estimates*, pt. 2, February 1997, p. N-1; HUD, *Congressional Justifications for 1999 Estimates*, pt. 2, February 1998, p. M-1; HUD, *Congressional Justifications for 2000 Estimates*, pt. 2, February 1999, p. N-1; Executive Office of the President, Office of Management and Budget, fax to USCCR, Aug. 3, 2000, p. 2.

The decrease in complaints has occurred simultaneously with an increase in the number of compliance reviews conducted by FHEO staff (see table 6.6). The number of compliance reviews conducted increased from 57 to 320 between FY 1994 and FY 1998, yet fell to only 112 in FY 1999. FHEO staff conducted only 39 Title VI compliance reviews in FY 1999, which is significantly lower than the number of compliance reviews conducted in FY 1998 (see table 6.6). More than half of the compliance reviews are conducted under Title VI and Section 504. FHEO expects to increase its compliance reviews over the coming years. For FY 2001, FHEO estimates that it will conduct 126 compliance reviews,[33] still far less than the number of compliance reviews conducted in FY 1997 and FY 1998.

[33] Ibid.

According to HUD documents, the FHEO Field Office was reorganized in the mid-1990s. Thus, FHEO was able to conduct more compliance reviews in FY 1997 than in previous years.[34] At the same time, FHEO increased its coordination and collaboration with the Office of Housing, Public and Indian Housing, and Community Planning and Development in order to improve the targeting of recipients for compliance reviews.[35]

Nonetheless, the number of staff in the field declined by 23 percent between FY 1994 and FY 2000 (see table 6.7), as did the total number of compliance reviews. In FY 1994, there were 603 FTEs located in field offices, compared with only 462 FTEs in FY 2000.

TABLE 6.7

HUD/FHEO Staffing History

Fiscal year	Field FTE	Headquarters FTE
1994	603	147
1995	500	184
1996	488	169
1997	476	145
1998	507	127
1999	477	115
2000	462	122

SOURCE: FHEO, fax to USCCR, Aug. 31, 2000, p. 2.

[34] U.S. Department of Housing and Urban Development, *Budget Summary, Fiscal Year 1996*, p. FHEO-2.

[35] Ibid.

TABLE 6.8

HUD/FHEO Field FTE Staffing History

Fiscal year	Fair housing enforcement	Program compliance
1994	406	100
1995	356	78
1996	355	77
1997	351	74
1998	356	70
1999	328	66
2000	319	61

SOURCE: HUD, *Congressional Justifications for 1996 Estimates*, pt. 2, March 1995, p. S-1; HUD, *Budget Summary, Fiscal Year 1996*, p. FHEO-3; HUD, *Budget Summary, Fiscal Year 1997*, p. FHEO-5; HUD, *Congressional Justifications for 1998 Estimates*, pt. 2, February 1997, p. L-1; HUD, *Congressional Justifications for 1999 Estimates*, pt. 2, February 1998, p. K-1; HUD, *Congressional Justifications for 2000 Estimates*, pt. 2, February 1999, p. L-1; Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001*, appendix, p. 525.

Field positions are skewed toward fair housing enforcement as opposed to compliance. Since FY 1995, the ratio of enforcement to compliance staff has remained around five to one (see table 6.8). For example, in FY 2000 there were 319 FTEs for enforcement, compared with 61 FTEs for compliance. Yet, in FY 1994, there were 406 FTEs responsible for enforcement and 100 FTEs for compliance, a ratio of four to one.

FHEO's FY 2001 budget request includes a new initiative which will be funded from funds that would have been appropriated for salaries, expenses, FHAP, and FHIP. According to the FY 2001 budget request, "[t]his new initiative supports the Annual Performance Plan and National BOP Program Goals of restoring the public trust by decreasing the number of complaints filed with HUD using Alternative Dispute Resolution mechanisms to resolve selected Fair Housing Act complaints through the conciliation process mandated under Section 810 of the Act."[36] The FY 2001 budget, which provides $400,000 for the Alternative Dispute Resolution program, includes a cost estimate of $400 per conciliated case. The agency expects to resolve 1,000 cases through the program during its first year of operation.[37]

In contrast to FHEO, the budget for FHAP has increased since FY 1994, in both actual and real dollars. In FY 1994, FHAP received its requested amount of $4.5 million (see table 6.9). Between FY 1994 and FY 1999, the FHAP budget appropriation has more than doubled in real dollars (see table 6.10).

FHIP, on the other hand, has experienced a roller coaster of funding since FY 1994. Its Congressional appropriation in actual dollars has fluctuated between $26 million and $15 million (see table 6.11), having received $24 million in FY 2000. In addition, its appropriated funds fell far short of its requested funding in FY 1998 and FY 1999.

[36] OMB, August 3 data sheet, p. 7.

[37] Ibid.

TABLE 6.9

Fair Housing Assistance Program (FHAP) Funding History

(in actual dollars)

Year	President's request	Congressional appropriation
1994	$4,519,000	$4,519,000
1995	7,400,000	7,375,000
1996	15,000,000	13,000,000
1997	15,000,000	15,000,000
1998	15,000,000	15,000,000
1999	23,000,000	13,000,000
2000	20,000,000	20,000,000
2001	21,000,000	22,000,000

SOURCE: HUD, *Budget Summary, Fiscal Year 1996*, p. FHEO-5; HUD, *Budget Summary, Fiscal Year 1997*, p. FHEO-5; HUD, *Congressional Justifications for 1998 Estimates*, pt. 2, February 1997, p. M-1; HUD, *Congressional Justifications for 1999 Estimates*, pt. 2, February 1998, p. L-1; HUD, *Congressional Justifications for 2000 Estimates*, pt. 2, February 1999, p. M-1; Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001*, appendix, p. 525. H.R. 4635, 106th Cong. (2000), as enacted; H.R. 2684, 106th Cong. (1999), as enacted.

TABLE 6.10

Fair Housing Assistance Program (FHAP) Funding History

(in millions of constant 1994 dollars)

Year	President's request	Congressional appropriation
1994	$4.5	$4.5
1995	7.2	7.2
1996	14.3	12.4
1997	14.1	14.1
1998	13.9	13.9
1999	21.0	11.9
2000	17.8	17.8
2001	18.3	19.2

NOTE: Estimates based on data in table 6.9

TABLE 6.11

Fair Housing Initiatives Program (FHIP) Funding History
(in actual dollars)

Year	President's request	Congressional appropriation
1994	$16,900,000	$20,481,000
1995	23,000,000	26,000,000
1996	30,000,000	17,000,000
1997	17,000,000	15,000,000
1998	24,000,000	15,000,000
1999	29,000,000	22,000,000
2000	27,000,000	24,000,000
2001	29,000,000	24,000,000

NOTE: Information for the FY 2000 appropriation provided by OMB. OMB interview, attachment.

SOURCE: HUD, *Budget Summary, Fiscal Year 1996*, p. FHEO-5; HUD, *Budget Summary, Fiscal Year 1997*, p. FHEO-5; HUD, *Congressional Justifications for 1998 Estimates*, pt. 2, February 1997, p. M-1; HUD, *Congressional Justifications for 1999 Estimates*, pt. 2, February 1998, p. L-1; HUD, *Congressional Justifications for 2000 Estimates*, pt. 2, February 1999, p. M-1; Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001*, appendix, p. 525. H.R. 4635, 106th Cong. (2000), as enacted; H.R. 2684, 106th Cong. (1999), as enacted.

TABLE 6.12

Fair Housing Initiatives Program (FHIP) Funding History
(in millions of constant 1994 dollars)

Year	President's request	Congressional appropriation
1994	$16.9	$20.5
1995	22.5	25.4
1996	28.7	16.2
1997	14.1	14.1
1998	22.3	13.9
1999	26.5	20.1
2000	24.1	21.4
2001	25.3	20.9

NOTE: Estimates based on data in table 6.11.

Conclusion

In 1995, the Commission concluded that "both the President and the Congress have retreated from their obligation to ensure that adequate resources are provided for civil rights enforcement."[38] This current study demonstrates that this abandonment has continued and funding for civil rights enforcement remains insufficient.

From FY 1994 to FY 1999, the number of full-time-equivalent positions in the six federal civil rights enforcement agencies discussed in this report has declined by approximately 10 percent. As a result of inadequate funding, the nation's civil rights laws remain, in large measure, "unfunded mandates." These agencies' budgets have been reduced at a time when their enforcement responsibilities have grown substantially. In the face of rising workloads, inadequate funding and staff levels continue to endanger our national enforcement of civil rights laws.

[38] USCCR, 1995 Budget Report, p. 71.